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INTRODUCTORY STATEMENT.

Previous reports of the Judicial Council were reprinted in the "Quarterly" for November, 1925, December, 1926, November, 1927, December, 1928, December, 1929, November, 1930, and November, 1931. The Eighth Report reprinted herein has been filed with the Governor.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912,

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FRANK W. GRINNELL.

Sworn to and subscribed before me this 26th day of September, 1932.

BETTY E. KRULEE,
Notary Public.

[SEAL]

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EIGHTH REPORT

OF THE

JUDICIAL COUNCIL OF MASSACHUSETTS

CREATED BY CHAPTER 244, ACTS OF 1924

(Now General Laws, Ter. Ed. Chapter 221, Sections 34A–34C)

NOVEMBER, 1932

(For Index see pages 4-5)

PUBLICATION OF THIS DOCUMENT APPROVED BY THE COMMISSION ON ADMINISTRATION AND FINANCE

2400-12-'32. No. 6827

The Commonwealth of Massachusetts

November 30, 1932.

To His Excellency Joseph B. Ely,

Governor of Massachusetts.

In accordance with the provisions of section 34B of chapter 221 of the General Laws (Ter. Ed.) we have the honor to transmit the eighth annual report of the Judicial Council.

T. HOVEY GAGE, *Chairman.*
FREDERICK LAWTON.
CHARLES THORNTON DAVIS.
WILFRED BOLSTER.
HARRY R. DOW.
CHARLES L. HIBBARD.
FREDERICK W. MANSFIELD.
WILLIAM G. THOMPSON.
FRANK W. GRINNELL.

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APPENDIX B

ACTS OF 1924, CHAPTER 244

As amended by St. 1927, c. 293 and St. 1930, c. 142
Now appearing as G. L. (Ter. Ed.) Ch. 221 §§ 34A–34C

AN ACT PROVIDING FOR THE ESTABLISHMENT OF A JUDICIAL COUNCIL TO MAKE A CONTINUOUS STUDY OF THE ORGANIZATION, PROCEDURE AND PRACTICE OF THE COURTS.

Be it enacted, etc., as follows:

Chapter two hundred and twenty-one of the General Laws is hereby amended by inserting after section thirty-four, under the heading "Judicial Council," the following three new sections:—*Section 34A.* There shall be a judicial council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished, and the results produced by that system and its various parts. Said council shall be composed of the chief justice of the supreme judicial court or some other justice or former justice of that court appointed from time to time by him; the chief justice of the superior court or some other justice or former justice of that court appointed from time to time by him; the judge of the land court or some other judge or former judge of that court appointed from time to time by him; the chief justice of the municipal court of the city of Boston or some other justice or former justice of that court appointed from time to time by him; one judge of a probate court in the commonwealth and one justice of a district court in the commonwealth and not more than four members of the bar all to be appointed by the governor, with the advice and consent of the executive council. The appointments by the governor shall be for such periods, not exceeding four years, as he shall determine.

Section 34B. The judicial council shall report annually on or before December first to the governor upon the work of the various branches of the judicial system. Said council may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable.

Section 34C. No member of said council, except as hereinafter provided shall receive any compensation for his services, but said council and the several members thereof shall be allowed from the state treasury out of any appropriation made for the purpose such expenses for clerical and other services, travel and incidentals as the governor and council shall approve. The secretary of said council, whether or not a member thereof, shall receive from the commonwealth a salary of thirty-five hundred dollars.

MEMBERS OF THE COUNCIL

THOMAS HOVEY GAGE of Worcester, *Chairman*

FREDERICK LAWTON of Boston
WILFRED BOLSTER of Brookline
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WILLIAM G. THOMPSON of Newton
FRANK W. GRINNELL of Boston, *Secretary*

EIGHTH REPORT

OF THE

Judicial Council of Massachusetts

To His Excellency

JOSEPH B. ELY,

Governor of Massachusetts

The Judicial Council was created by St. 1924, chapter 244 (*see copy printed on opposite page*), "for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished and the results produced by that system and its various parts."

In 1925, the legislature also submitted the following request to the Council.

1925 Resolves, Chapter 27

"*Resolved*, That the judicial council is hereby requested to investigate ways and means for expediting the trial of cases and relieving congestion in the dockets of the Superior Court, and, among other things, the advisability of increasing or of wholly removing the *ad damnum* limits of district court jurisdiction in civil cases; measures for discouraging frivolous appeals; measures for requiring parties to frame issues in advance of trial by greater specification in the declaration of what the plaintiff in good faith claims and greater specification in the answer of what the defendant admits or in good faith denies, with suitable penalties for frivolous or unfounded allegations and denials; ways and means for encouraging, so far as consistent with constitutional rights, trials without jury, including specifically an inquiry into the operation of the laws of Connecticut and Maryland relative to the waiver of jury trials in criminal cases; and any other ways and means that may appear feasible to said council for improving and modernizing court procedure and practice so that, consistently with the ends of justice, the proverbial delays of the law and attendant expense, both to litigants and the general public, may be minimized, (*Approved April 24, 1925*)."

Of certain subjects specifically mentioned in this resolve, the following have already been reported upon by the Council and legislation adopted in accordance with recommendations of the Council.

In its First Report (pages 47–50), the Council recommended the removal of all financial limits, referred to in the resolve as "*ad damnum* limits" of district court jurisdiction in civil cases, and this recommendation was adopted by the legislature by St. 1929, c. 316.

The subject of waiver of jury trial in criminal cases was discussed at length in the First Report of the Judicial Council (pp. 21–28) and an act authorizing such waiver in Massachusetts was recommended. This recommendation was adopted by St. 1929, c. 185.

Various subjects covered by the more general language of the resolve above quoted have been discussed and recommendations made in our previous reports, a number of which have been adopted in substance. Other matters within the general language of the resolve as well as of the act creating the council are under continuous consideration by the Council.

Since our Seventh Annual Report in 1931, several recommendations of the Judicial Council were in substance adopted by the legislature. The acts embodying these recommendations are listed later in this report for convenient reference (see p. 59).

The Problem of Congestion in the Superior Court and the Growing Public Expense of the Administration of Justice*

I. Cost.

As pointed out in our Third Report (pp. 9–10) and again in our Sixth Report (pp. 10–11) the net annual cost to the public of the judicial system was somewhat over $6,000,000 six years ago. If the prisons, jails, etc., were included it was about $10,500,000. How much these amounts have increased in the last six years we

* This subject of congestion in the courts, and particularly in the Superior Court especially since the motor vehicle insurance law of 1925, has been a matter of discussion before the legislature and at meetings of the Judicial Council ever since its first report. Recommendations have been made from time to time bearing directly or indirectly upon it. Some of these recommendations have been adopted by the legislature and others have not as yet been adopted.

In its Fourth Report (pp. 30–37), the Judicial Council referred to various forms of "commission plans" which had been called to its attention and to the suggestions of substituting "liability without fault" for the present law of liability based on negligence. It referred also to suggestions of state insurance. The Judicial Council pointed out some of the difficulties, constitutional and otherwise, that stood in the way of some of these plans. The Council suggested that if the legislature desired further study of the idea of an administrative board or a state insurance fund for liability without fault that a special commission should be appointed to consider the matter and to consider the experimental laws in other states (see p. 37).

Since that time, the legislature by c. 40 of resolves of 1929 created a special commission to study the whole subject of "compulsory motor vehicle liability insurance and related matters. That commission filed an extended report (Senate 280 of 1930) which contained a detailed study of the operation of the compulsory insurance law, the methods of rate-making and a number of proposed bills for dealing with motor vehicle accident litigation. The report also contained a detailed study of state insurance bills then pending, the conclusions of the commission in regard to them and to State insurance in general and also recommendations by the commission of a number of measures considered likely to improve the operation of the Massachusetts law. Few of the recommendations of that commission have as yet been adopted.

On pages 119–121 of that report, the commission called attention to the study then in progress by a special committee created under the Council of Research of Columbia University of the various methods of dealing with automobile accidents in different states and countries with special reference to suggestions of substituting a system of compensation without fault to be administered by a commission similar to those which administer the Workmen's Compensation Act in connection with industrial accidents.

Since that report was made, the Research Committee has published its report which is referred to later in this report.

have not yet ascertained, but they must have increased considerably.

In the Seventh Report (p. 16) appears a table showing the cost of jurors to the various counties in the years 1928–1929, 1929–1930. The total for all counties increased from $584,451.30 in 1928–1929 to $680,874.47 in 1929–1930.

II. The Picture of the Congestion.

The tabulated returns of the business of the Superior Court for the year ending June 30, 1932 (see Appendix A, p. 80) show the following facts:

On June 30, 1931, there were pending on the civil dockets 74,223 law cases, 10,628 equity cases and 592 cases of divorce and nullity of marriage. In the ensuing year, new cases were entered as follows: — 34,464 law cases, 3,411 equity cases and 81 divorce and nullity cases. During the year, the number of cases disposed of by trial, settlement, default or otherwise shows 28,525 law cases in which jury trial was claimed, 5,153 jury waived cases, 3,481 equity cases and 270 divorce and nullity cases. Of these numbers, those actually tried were 2,505 jury cases, 725 cases without jury, 605 equity cases and 92 divorce and nullity cases. 19,280 civil cases were marked inactive and subject to dismissal under the rule, but on June 30, 1932, the numbers "awaiting trial" were 60,201 cases in which jury trial was claimed, 9,684 jury waived cases, 8,577 equity cases and 328 divorce and nullity cases. In the past about 80% of the "inactive" cases have been dismissed under the rule. Assuming that 80% or 15,424 of the 19,280 cases marked "inactive" on June 30, 1932, are to be dismissed, there were still more than 60,000 cases "awaiting trial," of which about 50,000 were jury cases.

On the criminal side, there were 2,664 cases pending on June 30, 1931; 6,519 new indictments were returned by the grand jury; 10,421 appealed cases and 206 actions on bail bonds and recognizances were entered during the year ending June 30, 1932. 16,800 cases were disposed of by trial or otherwise, leaving 3,920 cases remaining on June 30, 1932. Of the cases "disposed of," 3,371 were actually tried and 3,055 were awaiting trial at the end of the year.

The congestion is obvious especially in the jury lists on the civil side of the court. While a comparison with the tables in our previous reports shows a drop of about 4,000 in the number of new civil entries, both law and equity, the picture of congestion is substantially the same as in previous years. The congestion, of course, is

greatest in the Suffolk "general" list. Although seven jury sessions are held almost continually from September through June, there were 27,410 jury cases awaiting trial on June 30, 1932. In Middlesex, there were 10,735 jury cases, in Essex 5,721 jury cases, in Worcester 5,378 jury cases, in Hampden 3,491 jury cases, in Norfolk 3,155 jury cases, in Bristol 1,810 jury cases and in Plymouth 1,381 jury cases, "awaiting trial." In Suffolk, on the general jury list, and in Norfolk counties, the average time between date of writ and trial in jury cases is 3½ years; in the Cambridge sitting in Middlesex, in the Worcester sitting in the city of Worcester and in the Salem sitting in Essex, it is over 2½ years. The period of waiting increases every year. In Suffolk, which regularly has almost one-half of the annual law entries throughout the Commonwealth, the average period elapsing between date of writ and trial in jury cases on the general list has increased each year so that whereas the general jury list was in arrears 2 years 3½ months for the year ending June 30, 1929, the time of waiting had increased to 3½ years, — an increase of 14½ months — on June 30, 1932. On the Suffolk special jury list which includes cases removed from the district courts, the average time between the date of the writ and trial is about 10 months.

The fact that court congestion is greatest in Metropolitan Boston calls for some consideration of county distribution of litigation. It has often been remarked that Suffolk County, with 20% of the population, and 28% of the valuation of the entire state, carries the burden of nearly half of the state's litigation. The question is often asked whether there is something wrong with our laws of venue (or place in which suit may be brought). The information shown in the tables in Appendix A (facing pp. 80, 82 and 86) indicates that the amount of leakage across county lines is negligible, that the litigation in Suffolk is predominantly indigenous, and that throughout the state there is a substantial correspondence between the volume of litigation and density of population.

We have thirty-two judges of the Superior Court including the Chief Justice with his added administrative duties as the head of the court, to dispose of all this business, civil and criminal, with and without juries except such appealed misdemeanor cases as are tried by district court judges sitting in the Superior Court on request of the Chief Justice.* The figures over a period of years show that only about 2,500 civil jury cases are tried each year. If all the jury

* During the year ending Nov. 30, 1931, district court judges sat 830 days in the Superior Court trying misdemeanor cases.

SUPERIOR COURT CIVIL CASES, 1924-1932

Year Ending	Cases Entered. Suffolk County.			Total Entered. In State.			Number Tried during the Year. In Suffolk County.				In State.			
	Law.	Equity.	Divorce.	Law.	Equity.	Divorce.	Jury.	Jury Waived.	Equity.	Divorce.	Jury.	Jury Waived.	Equity.	Divorce.
June 30, 1924	9,923	1,809	565	21,964	3,230	1,412	1,569	274	292	589	2,594	563	475	1,571
June 30, 1925	10,034	1,615	306	23,090	3,009	906	1,695	209	391	274	3,022	514	562	707
June 30, 1926	–	–	–	23,223	3,316	–	1,074	337	445	–	2,735	668	683	–
June 30, 1927	11,863	2,135	104	24,516	3,655	554	1,149	380	342	89	2,857	696	601	452
June 30, 1928	16,270	1,920	40	32,551	3,392	469	1,053	350	404	43	2,672	669	679	402
June 30, 1929	16,562	2,011	27	33,165	3,502	365	1,089	243	378	26	2,317	490	536	285
June 30, 1930	17,584	2,133	11	35,190	3,642	196	1,069	325	441	16	2,684	617	632	271
June 30, 1931	18,370	2,120	17	36,190	3,604	111	1,063	362	312	7	2,533	808	510	122
June 30, 1932	16,209	1,846	6	34,464	3,411	81	966	335	398	10	2,505	725	605	92

SUPERIOR COURT CRIMINAL CASES, 1928-1932

For Year Ending	Number of Indictments Returned.	Number of Appealed Cases Entered.	Number of Cases Tried.	Number of Actions on Bail Bonds on Recognizances Entered.
June 30, 1928 . . .	4,005	10,455	2,192	287
June 30, 1929 . . .	4,054	11,926	2,553	218
June 30, 1930 . . .	4,532	9,559	2,521	191
June 30, 1931 . . .	5,525	9,901	3,308	121
June 30, 1932 . . .	6,519	10,421	3,371	206

cases "awaiting trial" were to be tried, it would take the present force of judges 20 years to try them. If we doubled the number of judges, it would take about 10 years, and in the meantime the new cases would be coming in at the rate of over 30,000 a year. Of course, most of the cases are never tried, but how many are settled because of the long delay involved and the chances of witnesses dying or disappearing or forgetting or inventing the facts, no one can say. Since our compulsory insurance law, most of the cases in the Superior Court are motor vehicle cases. The inevitable delays disgust business men and others not concerned with motor vehicle cases, and prevent them from seeking justice in the courts.

The condition seems obviously unhealthy for the public and the litigants generally. What is to be done about it?

Considering it both from a business and from a social point of view the question arises whether the public in attempting to provide theoretical opportunities for obtaining justice is not in fact providing excessively dilatory machinery which defeats its own purpose at an enormous expense to the public.

III. Discussion of Factors Contributing to Congestion and Expense.

The cost to the counties of jury service was increased in 1924 by Ch. 111 (now G. L. 262, s. 25) when the compensation of each juror was raised from $4 to $6 per day.

It has been frequently pointed out that the adoption of our compulsory motor vehicle insurance law resulted in an increase of more than 9,000 entries in the Superior Court every year (see Senate 280 of 1930, page 78), but it may be profitable to consider some other factors which have brought about the present situation.

A plaintiff has a choice of courts. Entering his case in a congested one is nothing that is forced on him. He can try a case of any size in a District Court and get a decision in a few weeks. Or he can go to the Superior Court for a jury trial and wait for several years. Of course, if a tort plaintiff chooses to wait so long in order to determine the amount of his damage, no sympathy need be wasted on him on the score of delay. But we apprehend that this group of cases is numerically negligible. The majority of tort plaintiffs probably claim a jury trial because they think, or they are advised by their lawyers from habit, that a jury is more apt than a judge to find for the plaintiff and for larger damages. This appears to be a myth which may have been a truth in some bygone time, and is still handed down to younger lawyers and accepted by them as an immutable truism. The cold facts as

shown by our two-year study (5th report, p. 10) appear to be that jury verdicts were given motor vehicle plaintiffs in only 51 and 53% of the cases to juries tried in those years, while cases tried to a judge in the same court resulted in findings for the plaintiff in 87 and 74%. In addition it may be noted that in the Boston Municipal Court, of the 10,112 tort cases tried in the last eight years, 56% resulted in a finding for the plaintiff. Motor vehicle cases and other torts are here mingled. The figures on page 10 of the 5th report of the Judicial Council indicate that a motor tort plaintiff's prospects are decidedly better than those of other tort plaintiffs, so that if the figures in the Municipal Court could be restricted to motor tort plaintiffs, the percentage would probably be in the 60's. Some allowance, not measurable, must be made for that difference in types of cases which finds expression in the lawyers' maxim, "Try good cases to a judge, poor cases to a jury," but, even with such allowance, the bar tradition that tort plaintiffs succeed more often before a jury appears to be a delusion.

Another myth, widely voiced, is that Suffolk County juries are particularly kind to tort plaintiffs as compared with juries in other counties. No great variation can be shown by the actual figures collected by counties in our fourth and fifth reports, where this problem was studied.

Yet another common belief is that juries are particularly liberal to tort plaintiffs in general in assessment of damages. This is, for lack of adequate material, more difficult of proof or disproof. The Commission on the Inferior Courts of Suffolk County in 1911, studying the workings of the old system of appeal and re-trial, found that a jury trial lowered the judge's finding three times to twice that it increased it. It is also a fact that a large insurance company in recent years once ordered removal from the Boston Municipal Court to the jury court of all the motor tort cases which it was defending, solely on the advice of its *actuaries*. That is something which tort plaintiffs and their counsel might well reflect upon. No comparison of gross totals or average findings in the two courts has value, for small cases naturally gravitate to the District Court. A comparison between hope and realization hardly helps, for the amount stated in the writ is apt to be fanciful and excessive.

Another argument advanced in favor of claiming jury trials is that in trials to a judge too much depends on the personal equation of the particular judge who happens to hear the case — that there are "plaintiff's judges" and "defendant's judges." A study made some years ago of the individual trial work of the nine judges of

the Boston Municipal Court, covering four years and over 6,000 trials, produced a rather startling result. Five of the nine had exactly the same percentage, 63% of findings for the plaintiff, 37% for the defendant. And the extremes were 60% and 67%. A similar study of the last four years' trial work of the regular judges of that court, covering 11,538 cases, showed an extreme spread of 14%, but the work of six of the nine judges fell within a three-point range and eight of the nine within a ten-point range. We think it more than likely that an analysis of the jury-waived work of the individual judges of the Superior and other District Courts, were the figures available, would show equal uniformity. And we doubt that any comparison of the work of various jury panels would show a smaller or even as small a spread. The argument based on the chances with a jury appears to be another bar delusion except in cases in which the counsel for the plaintiff is a man of rare skill and experience in trying jury cases.

It might be inferred from all that has been said that the members of the Judicial Council are unfriendly to the whole jury system. On the contrary we are all strongly in favor of that institution, when rightly used. We are simply pointing out the facts which indicate an excessive, extravagant and unprofitable use of juries Observers of our system have often criticized our over-use of juries. We are inclined to believe that a good deal of unmerited sympathy has been given tort plaintiffs and their lawyers who to their own disadvantage have unwisely created a situation by which they are themselves the losers. Congestion and delay appear largely on the general jury list, made up mainly by *plaintiffs* who have elected jury trial. Cases removed from District Courts by defendants go on the speedy list in Suffolk and are not greatly delayed in trial. Such cases comprise only 10% of Suffolk Superior Court law entries in the latest year for which returns can be had.

If then it be true, as it appears to be from the studies referred to, that the tort plaintiffs who have created this situation — and the great bulk of Superior Court law entries are tort cases — have unknowingly been standing in their own light, the voice of the taxpayer may well be heard. As we have frequently pointed out, jury trials cost the county about ten times as much as District Court trials and for jurors alone about $250 a day more than trials to a judge without a jury in the Superior Court.* The burden on

* See "Bar Bulletin" for August, 1932. For general discussion see "Civil Juries and the Law's Delay," by Mr. Justice Lummus in B. U. Law Rev. for June, 1932, reprinted in M. L. Q. for August, 1932, and in "The Law Society Journal" for May-August, 1932. See also discussion by Dunbar F. Carpenter, Esq., in "Bar Bulletin" for October, 1931, July and October, 1932.

the public of giving tort plaintiffs a jury trial for the present merely nominal fee of $3, looks still more burdensome when it turns out to be not to their advantage, as the figures seem to show. An increased fee in the Superior Court does not then seem even a hardship, much less a denial of justice.

To state the matter concretely, approximately 2,500 jury cases are tried annually. This is a plaintiff to each 1,348 of population. He now can for $3 try his case by the method of jury trial in a court which for trial purposes costs that number of people around $500 a day, or he can go to a court which costs the same people about one-tenth of that amount, or he can waive a jury trial in the Superior Court and have a hearing before a judge at almost an equal saving in public cost. Are the 1,346 persons who are not concerned in this litigation willing, particularly in these times of financial stress, to continue to carry that extra load, or are they of the opinion that the parties concerned should either carry somewhat more of the load of their own making, or else be expected to take a less costly service?

IV. Current Experiments in Dealing with Congestion and Expense

The Practice of Referring Motor Vehicle Cases to Auditors

During the past year, the Superior Court has tried the experiment of referring motor vehicle cases to auditors.* This method of bringing about a more prompt hearing has proved successful in practice and generally satisfactory to the bar and to the litigants.

In trying this experiment with auditors, the judges of the Superior Court have tried it under different conditions. Sometimes they have referred cases to auditors on motion of either party without any conditions whatever; other judges have referred cases only when the parties agreed to accept the auditor's decision as final. We understand that many of the cases thus referred in a number of the larger counties have been settled either before or during the auditor's hearing or upon his report without a retrial before the court or jury, thus giving evidence of the fact that a prompt hearing of some kind is in most cases more important to the parties than a

* For those who are not familiar with courts it should, perhaps, be explained that an auditor is a member of the bar appointed by a special order of court to hear the parties and their evidence and to report his findings to the court. Either party has a right after the report is filed to have the case retried either before a judge of the Superior Court or, if he has claimed a jury, before a jury. In case of such retrial the report of the auditor has the force of *prima facie* evidence, as it is called, or, in other words, the auditor's report is sufficient evidence to warrant the judge or jury in deciding in accordance with the auditor's findings unless at the retrial those findings are controlled by other evidence or upon the study of the facts contained in the auditor's report the court or jury disagrees with the auditor.

jury trial. Obviously a hearing before an auditor may cause less expense to the public than a trial before a jury of twelve men and a judge of the Superior Court if the case is concluded by the auditors hearing but if it has to be tried over again before the court there is the added expense of a second hearing.

At a conference between the Judicial Council and a committee of the County Commissioners Association and the County Treasurers, the county representatives expressed approval of the use of auditors in personal injury cases, but explained that as it was a new experiment for which they had not provided in their budget estimates for 1932, the use of auditors in this way by the Superior Court in some if not all of the counties would have to be curtailed during the remainder of 1932 because the county appropriations for such purposes had already been exhausted in a number of the counties which were facing difficult financial problems. The increase in the number of references to auditors from 468 in 1931 to 2,090 in the first nine months of 1932 indicates the extent of this experiment of dealing with congestion.

While this practice of referring cases to auditors has been successful in reducing the congestion to some extent by disposing of more cases more promptly and with less overhead cost to the public than the dilatory and expensive method of jury trial, it cannot be regarded as a solution of the problem of either congestion or expense.* The number of jury cases piling up from year to year, as already shown, obviously presents a problem too large to be permanently solved

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* Mr. Justice Lummus in a letter in the Massachusetts Law Quarterly for August, 1932 (p. 44), says of this practice: — "The court has no power to provide that the finding of facts shall be final, unless the parties so agree, and many parties insist upon reserving the right to try the case over before a jury. Nevertheless this practice has resulted in many settlements and has helped reduce the congestion of jury cases. But it must be regarded as a useful makeshift, not as a permanent remedy. Its success depends upon the continued cooperation of parties, and that is uncertain. As a means of present financial relief in this emergency, it is worthless. While hearings before auditors cost the public much less than jury trials, and in a few years doubtless would help the public treasury, the immediate effect is quite the reverse. The jury sessions have to continue in full force, with all their expense, and the increased cost of auditors forms an additional burden upon the budget of the current year. While this is the only remedy for congestion open to the court without legislation, it is not an adequate remedy."

The tables in Appendix A, p. 78, show that, during the calendar year of 1931, 468 cases were referred to auditors as against 260 in 1930 and 865 equity cases were referred to masters as against 572 in 1930.

The total amount paid by the various counties during the year for masters and auditors, etc., was $182,014.20, being about $12,000 more than in 1930 and the largest amount in any year. In considering these figures it must be remembered that the amounts paid in any year include bills for some cases referred in previous years, so that the ultimate cost of the cases referred in one year can be estimated only by an average. The cost of auditors for 1932 will be still larger because of the use of auditors in accident cases as shown by the table for the first nine months of 1932.

by this practice. And while the practice is effective so far as it goes, it does not reduce the present expense of the courts. On the contrary, it increases the present cost because the jury sessions are still struggling at full capacity and at the full jury cost with the enormous list of cases which are not referred to auditors and such of referred cases as have to be tried over again before the court. This fact naturally causes concern for the county officials who have to find the money to pay the bills. If the judges did not have to spend so much time in jury trials, they could dispose of more cases more promptly than by referring them to auditors and at less public cost.

While this report was going through the press, the Superior Court announced a new plan providing additional opportunities in various counties for the prompt hearing of jury waived cases. This plan was printed in the court news in the "Boston Herald" of December 22, on p. 23.

V. Remedies for Congestion.

A. Preliminary Remarks

There are certain powers, the exercise of which is generally recognized as part of the judicial function of our courts, which enables them to make rules and to arrange sittings of the courts. Some of these powers are referred to in the general clauses of G. L. c. 213, s. 3, relating to rules and St. 1932, c. 144, relative to sittings of the Superior Court.

As we have already intimated, a large number of actions now brought in, or removed to, the Superior Court, should be brought or tried in the district court. A trial in a district court with its successfully operating appellate division will result in giving litigants more prompt decisions at much less expense to the public and all concerned. Elsewhere in this report, we recommend enlarging the opportunities of bringing suit in the district courts in a certain class of actions within county lines. How many non-meritorious or "nuisance" actions are begun, there is no way of telling, but we believe and it is common opinion of men of experience, not only in the legal profession on and off the bench, but among laymen, that there are many, especially motor vehicle cases. These get into the Superior Court where a jury is claimed. This is not a condition peculiar to Massachusetts except so far as the bringing of such suits is encouraged by the pioneer experiment in this commonwealth of compulsory insurance; it is a country-wide problem (see Report of Commission on the Motor Vehicle Law, Senate

230 of 1930, pages 73-87 and references therein contained). We feel that the bringing of such nonmeritorious or "nuisance" actions which encumber the dockets should be discouraged.

B. The Entry Fee in the Superior Court Should Be Increased

We again recommend unanimously that the entry fee in the Superior Court be substantially increased. If the district courts could be considered as an isolated proposition, we should favor an increased entry fee there, but in view of the very much smaller operating cost of the district courts, it seems clear to us that the larger the spread between the cost of entry in the Superior and district courts, the larger the number of litigants who will resort to the latter courts. The argument for the increase of district court entry fees to $3 is the increased revenue, about $214,000 if litigation does not slacken. The argument against it is the loss through the cost of such cases as are not deterred from resort to the Superior Court, the diminished attack upon Superior Court congestion, and the sentimental appeal against costly justice in the district or "people's courts." If the legislature should decide to increase the entry fee in the district courts, we believe that it should be done by a plan of graduated entry fees, leaving the present fee of $1 for all actions in which the amount claimed in the writ is $500 or less, and providing that the entry fee for actions in which a larger sum is claimed shall be larger.

C. A Jury Fee

A majority of the Council favor a jury fee in addition. Mr. Mansfield and Mr. Thompson dissent on this point and do not believe in a jury fee. If a jury fee is imposed, provision should be made similar to that which now appears in G. L. c. 231, s. 107, relative to the requirement of a removal bond, that "The court may in any case, for cause shown, after notice to adverse parties, permit a jury trial without payment of a jury fee. This will enable the court in proper cases to prevent a hardship in cases of poor persons who cannot pay the fee."

D. Fewer Jury Sessions and More Jury-Waived Sessions

Jury trials are now given what may be termed the "right of way" in the courts. There are only two or three jury-waived sessions held in Suffolk County, whereas the figures show the congestion there is greatest. The question arises whether it is not a mistaken practice to give expensive jury cases the "right of way" rather than the

more prompt and less expensive jury-waived cases. If there were more jury-waived sessions and fewer jury sessions, the congestion and expense would be materially reduced. The increased opportunities for prompt trial in jury-waived sessions might result in attracting more and more cases to those sessions. The court may thus adjust itself to the changing needs of the community.

As already stated while this report was in the press the Superior Court announced a new plan to provide more opportunities for jury-waived hearings.

E. Waiver of a Jury Trial as a Condition of Insurance Protection

Just how far all or any of these steps will go in cutting down court congestion is problematical. The Council is still in favor of the more radical step suggested in substance in its Fourth Report (p. 17), that the right of a judgment creditor to realize upon a compulsory liability policy, — a right which is a gift by statute and not a constitutional right, be restricted to judgments obtained without jury trial. That step would check Superior Court congestion for the future, although it would leave the present load untouched.

When this recommendation was made in our Fourth Report, the plan was to limit the right of the injured person to claim the protection of the liability insurance to judgments obtained in cases begun in the district courts, and it was suggested that to accomplish this result it would be necessary to extend compulsory insurance to cover property damage as well as personal injuries. This was also the view expressed in the Report of the special Commission on Compulsory Insurance (Senate 280 of 1930 p. 112). The reason for this view was that, as personal injury and property damage often result from the same accident and must be sued for in the same action because the cause of action cannot be split and made the basis of two actions, the plan would not work unless the waiver of a jury trial applied to both personal injuries and property damage. Upon further consideration, however, we think that the extension of compulsory insurance to cover property damage is unnecessary. All that is needed is to require the waiver of jury trial to extend to property damage when they are both claimed.

As an injured person has no constitutional right to insurance protection, but receives that right only by statute, the legislature can place any reasonable conditions that it deems advisable in the public interest on this right to insurance protection. As it is be-

coming more and more obvious that compulsory insurance and jury trial do not fit together in such a way as to accomplish the purpose of securing justice (which is the purpose of the compulsory insurance law), and as the continued attempt to administer the law through jury trials not only fails, but involves an enormous expense to the public which it cannot afford, we must invent some method of adjusting our administrative machinery to the facts in order to accomplish the just purpose of the law by securing its more prompt enforcement. The object of securing this result is a legal and reasonable public ground which warrants the legislature in imposing conditions on the right to claim the benefit of compulsory insurance. If the legislature can require waiver of a jury trial for personal injuries as such a condition, it can go further and require a person claiming both personal injuries and property damage to waive jury trial as to both if he wishes the protection of insurance for his injuries.

Accordingly, we advise that this step be taken in the interest both of the injured persons and of the public. It would in our opinion avoid more congestion, unjust delay and unnecessary expense than any other plan that has been suggested.

Of course, the requirement of such a waiver by the plaintiff would not prevent a defendant, or his insurance company on his behalf, from claiming the constitutional right to a jury trial and removing a case brought in the District Court to the Superior Court, or claiming a jury in a case brought in the Superior Court, but this practice might reasonably be checked by a substantial removal fee and by a substantial jury fee in the Superior Court if the defendant claims a jury in a motor vehicle case brought in that court, *in which the plaintiff has not claimed a jury*. The requirement of such fees under such circumstances seems a reasonable and constitutional condition of the right to use a car on the highway. Accordingly, we recommend that this step be taken also. This plan does not go nearly as far as the compensation commission plan suggested by House 618 and by the Columbia Research Committee (see Appendix B, p. 90), which are discussed later in this report, which preclude both jury trial and judicial hearing altogether. When it will take in the near future four or five years to reach a jury trial as the figures now indicate ("Bar Bulletin," Oct., 1932), it seems plain that radical steps are needed. While the increasing proportion of tort entries in the district courts indicates some relief for the congestion in the Superior Court, such gradual and relatively slight relief is inadequate for the acute condition which both in

point of cost and delay, shows that the cumbersome and expensive method of jury trial and such modern "social" needs as compulsory motor vehicle insurance do not fit together. The situation is bad; it is unjust, it is getting worse and action should not be delayed until every one is in agreement as to the one best plan, because that time never comes.

It seems better that the legislature should provide workable methods of administering the compulsory insurance law *within the courts* by imposing that method as a condition of granting the statutory right of insurance security than that it should take away not only a jury trial but even a judicial hearing and saddle the community as a whole or the motoring community with the blind experiment of liability without fault which is discussed in connection with House 618.

In considering this proposal, it should be clearly understood that it does not affect cases in which only property damage is claimed, as such cases ordinarily involve relatively small amounts and are probably brought in the district courts where there is no jury and are probably not often removed so that we do not believe that they contribute materially to Superior Court congestion. Our suggestion relates solely to cases in which damages are claimed either for personal injuries only or for property damage and personal injuries because those are the only cases involving compulsory insurance. We submit the following draft act.

Draft Act

To Facilitate the More Prompt Administration of the Compulsory Motor Vehicle Insurance Law, Prevent Delay from Congestion in the Courts and Expense to the Public.

Section 1. Section thirty-four-A of chapter ninety of the General Laws is hereby amended by inserting after the word "actions" in the twenty-eighth line thereof the words "begun in a district court, or in which the plaintiff waived a jury trial if the action was begun in the Superior Court," and by inserting after the word "others" in the forty-seventh line thereof the words "in actions begun in a District Court, or in which the plaintiff waives a jury trial if the action is begun in the Superior Court, to recover damages, including damages."

Section 2. Section thirty-four-D of said chapter ninety is hereby amended by inserting after the word "actions" in the ninth line thereof the words "begun in a District Court, or in which the plaintiff waived a jury trial if the action was begun in the Superior Court."

Section 3. Clause ten of section three of chapter two hundred fourteen and section one hundred thirteen of chapter one hundred seventy-five of the General Laws shall not apply to judgment creditors in actions for damages for personal injuries including death at any time resulting therefrom arising out of the ownership, operation, maintenance, control or use of a motor vehicle, whether property

damage is claimed in such actions or not, unless such actions were begun in a District Court or, if begun in the Superior Court, unless the plaintiff judgment creditor in such actions waived a jury trial.

Section 4. A defendant in an action for damages including damages for personal injuries caused by a motor vehicle or its operation, maintenance, control or use, begun in a District Court, who removes said action to the Superior Court, or if the action is begun in the Superior Court who claims a jury trial of such trial has not been claimed by the plaintiff, shall pay an entry fee for such removal, or a jury fee for such claim of dollars as a condition of such entry or of the recording of such claim.

Section 5. A plaintiff in an action for damages including damages for personal injury caused by a motor vehicle or its operation, maintenance, control or use, if begun in the Superior Court, shall be deemed to have waived a jury trial unless a claim therefor is filed with the declaration at the time of the entry of the writ.

Section 6. This act shall take effect on the day of 1932 and shall apply to actions entered on and after that date.

VI. Proposals Which Would Relieve Congestion by Transferring All Motor Vehicle Claims from the Courts to a Commission, and by Substituting Compensation without Fault for Liability Based on Negligence.

Report Requested by the Legislature on the "Subject Matter" of House Bills 618 and 777

By joint order of March 24 and 28, 1932*, the legislature requested a report on the bills numbered above, the substance of which appears in the footnotes on pages 25 and 33.

The Judicial Council is opposed to both of these bills. They are closely connected with the problem of court congestion. While both bills provide for commissions, they present a fundamental difference.

House 777 rests on our traditional policy of liability for fault. *House 618* abolishes liability for fault in motor vehicle accidents and substitutes compensation at fixed limited rates regardless of fault. Separate analysis and comment is therefore required. The joint legislative order requests the conclusions and recommendations of the Judicial Council on "the subject matter" of these bills as well as on the particular bills themselves.

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* *Ordered*, That the Judicial Council be requested to investigate the subject matter of current House document numbered six hundred and eighteen, providing for the creation of a motor vehicle accident division in the department of industrial accidents and for the reference thereto of all claims for damages in cases of personal injury and liability against owners of motor vehicles, of current House document numbered seven hundred and seventy-seven, providing for the creation of a motor vehicle accident commission and defining its powers and duties, and of current House document numbered six hundred and twenty, revising and perfecting certain provisions of law relative to compulsory automobile liability insurance and extending their scope to include property damage. Said council shall include its conclusions and recommendations in relation thereto, with drafts of such legislation as may be necessary to give effect to the same, in its annual report for the current year.

The Current Movement for Compensation without Fault Administered by a Commission

The commission to study compulsory motor vehicle insurance in its report (Senate 230 of 1930, pp. 119–121) called attention to the study then in progress by a special committee created under the Council of Research of Columbia University of the various methods of dealing with automobile accidents in different states and countries with special reference to suggestions of substituting a system of compensation without fault to be administered by a commission similar to those which administer the Workmen's Compensation Act in connection with industrial accidents.

Since that report was made, the Columbia University Research Committee has published its report* during the past year, a volume of 300 pages explaining the laws in various foreign countries and reporting results of the committee's study of the operation of the laws of the various states. That Research Committee

"believes that the principle of liability *for fault only* is a principle of social expediency, and that it is not founded on any immutable basis of right. The Committee has therefore tried to learn what actually happens when this principle of fault is utilized, and to estimate, so far as possible, what would happen if the principle of liability *without fault* were applied. The value of either principle is to be tested by its results rather than by *a priori* moral considerations. The principle of liability without fault is to-day applied in motor vehicle cases in Sweden, Denmark and Finland and in France at least in pedestrian accident cases."(Report, p. 212.)

The committee concludes that the Massachusetts Compulsory Insurance Law is much more effective in protecting the public

* The report of this research committee was followed recently by the report of a special Committee of Delegates of State and Local Bar Associations, which was held in Washington on October 10, 1932. The report of this committee, of which Henry S. Drinker, Jr., Esq., of Philadelphia (a member of the Columbia Research Committee) was chairman, was unanimously in favor of a plan for compensation without fault. As the report of the committee is a condensation of the more extended report of the larger research committee and contains the latest outline of the subject, we reprint it in Appendix B of this report in order to call attention to the character of a proposal which is receiving increasing attention throughout the country.

This brief report was not discussed at the meeting of the Conference of Bar Association Delegates in Washington, but was set over for consideration next year with a provision that members representing opposition to the proposal should be added to the committee in order that reports should be presented showing the conflicting views before the subject was further discussed. The publication of the report, in the program of the meeting, called forth vigorous protests from representatives of the bar, particularly in western and central New York, and several pamphlets have appeared in which the matter is ably discussed.

See "Discussion of Compulsory Compensation Insurance for Automobiles," by Crandall Melvin of Syracuse, N. Y., before the Federation of Bar Associations of the Fifth Judicial District in New York, June 25, 1932, and articles in the Columbia Law Review for May, 1932, by Young B. Smith, Austin J. Lilly and Noel T. Dowling (reprinted in pamphlet form). See also a review of the Columbia report by Prof. Landis, Harvard Law Review, for June, 1932, p. 1428 and "Comments" on the Columbia Report by P. Tecumseh Sherman, Esq., published by the Association of Casualty and Surety Executives, 1 Park Ave., New York.

against loss from injuries caused by financially irresponsible motorists than the laws in other states, but it does not consider that any of the laws in this country meet adequately the situation presented by the frequent injuries caused by automobiles. The committee says, on page 217:

" . . . the remedy must go further than the compulsory liability insurance law, and that no system based on liability for fault is adequate to meet existing conditions.

The Committee favors the plan of compensation with limited liability and without regard to fault, analogous to that of the Workmen's Compensation Laws. Such a plan would eliminate the use of the principle of negligence, would place the burden of economic loss on the owner or operator to whose activity the loss is chiefly due, would provide for an equitable distribution of the insurance fund according to the extent of the economic loss, and would provide a prompt remedy at small cost to the injured person or his family. The operation of such a plan would be of special benefit in the majority of cases of serious injury or of death. The Committee believes that such a compensation plan would be workable, that its cost to motor vehicle owners need not be unreasonable and that it would not violate the due process clause of the federal constitution."

The committee submits a plan for limited compensation without fault based on the New York scale of workmen's compensation payments to be covered either by a state fund or by private insurance.

In dealing with the problem of cost, the committee says (pages 213–214):

"*Cost to Policyholders:* Because there has been no experience under a compensation plan the cost of such a plan to policyholders cannot be accurately estimated. With the help of actuaries, the Committee has made certain estimates which may be taken as a working basis in considering the practicability of a compensation plan. These estimates relate the cost of the plan to the cost of compulsory liability insurance in Massachusetts. Taking the latter as 100, the Committee estimates that the cost of a compensation plan based on the scale of benefits of the Massachusetts workmen's compensation law would be from 90 to 98; while if the benefits were based on those of the New York workmen's compensation law, the cost would be from 148 to 161. The Committee's estimate of gross cost is for non-participating carriers. It would be reduced if the insurance were carried by a state fund or by private carriers paying dividends to their policyholders, although such a reduction would not change the comparison between the cost of liability insurance and the cost of the compensation plan, provided the same kind of carrier is assumed in each part of the comparison."

Discussion of House 618*

I. The Proposal to Extend Compulsory Insurance to Cover Liability or "Compensation" without Fault Instead of Liability Based on Negligence.

Aside from the details, which are not, in our opinion, thought out into a workable system and need not be discussed in detail, House Bill 618 (more fully described in the footnote) proposes a plan for compulsory insurance against liability for automobile accidents without fault, which is much more fully considered in the Report Research Committee, already referred to. House Bill 618 is a plan involving an addition to the gasoline tax to meet the salaries and operating cost, leaving the awards at fixed rates of compensation to be paid by insurance as in the Industrial Accident Department.

We shall not discuss the state fund aspect of such plans, suggested by the Columbia Research Committee, as an alternative to private insurance, as that has been discussed at length in the Report of the special Commission on Motor Vehicle Insurance (Senate 230 of 1930. See especially pp. 166–169). We see no reason to suppose

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*House 618

House 618 proposes the creation of a Motor Vehicle Accident Board of three with officers in the State House and authority

". . . to employ a secretary and office help and inspectors under such conditions and at such salaries as shall be approved by the Governor and Council, all salaries and expenses to be defrayed from receipts of the gasoline tax."

This board

". . . shall receive and investigate all claims for damage against owners of motor vehicles insured" under the present law "and shall have as far as applicable all powers to settle said claims under similar conditions as claims for injury are now settled by the Industrial Accident Board."

This board is to award "persons injured" a weekly compensation not to exceed $20 or to be less than $10 or may approve a lump sum settlement so long as the total payments do not exceed $5,000 for any one person or $10,000 for more than one person. Section 3 provides that

"Procedure, both in law and in practice, now in use by the Department of Industrial Accidents shall be followed by the Division of Motor Accidents so far as applicable."

This Division of Motor Accidents is

". . . to have the aid of the Registrar of Motor Vehicles and of his office and of the Commissioner of Public Safety and his office in making its investigations of claims coming before them."

All claims for personal iability shall be made to this "board" or "division" within one year and no claims shall be settled without its approval. The division shall have power to establish the fees of attorneys and doctors in all cases brought before it and all contracts and policies under the present motor vehicle insurance law shall be in conformity with the provisions of this act.

The proposed division is to be "created within the Department of Industrial Accidents."

This bill seeks to establish the double purpose of substituting liability without fault in place of the present rule of liability for negligence, and the transfer of the business from the courts to an administrative board.

that state liability insurance of any kind would be less expensive or more satisfactory either to the automobilist or to the general public than a system based on private insurance. We approach this question, therefore, as a proposal for a new system *covered by private insurance*, as the workmen's compensation system is covered as suggested in House 618.

The plan cannot be appraised without an understanding of the Workmen's Compensation Act as applied to industry in Massachusetts. It is a trite story to lawyers, but not so familiar to laymen. Out of our industrial revolution came certain rules of law, which, in time, with the change of public thought and the increase in esteem of human values in contrast to property values, came to be thought to bear too much in favor of the employer, too harshly against the employee. Society at large came to regard it as unjust that the wage-earner must forego employment, or assume the risks of that employment and that he should receive no compensation for injury resulting from the negligence of fellow servants in whose selection he had no voice. And some doubts began to be expressed as to whether former rules barring the employee from recovery if any fault of his had helped to cause his injury were quite suited to the fatiguing monotony of machine-tending. So, instead of modifying those rules, the legislature decided, in this limited field, to discard the rule of liability for fault, and to substitute measured compensation regardless of fault. It was decreed that industry should socialize its own losses. But no employer need join the system. If he stayed out, however, he lost the defences that the negligence causing injury was that of a fellow servant, or that the employee had assumed the risk of injury, or that he had himself been negligent. The reason why this election to join or stand apart was given was because the Massachusetts Constitution gave either party a right to a trial and a jury trial if he chose, which could not be taken from him by any legislative act.

But House 618 would take from an injured party the right to claim such damage as shall adequately meet his loss and would give him an arbitrary amount which may be more or less than adequate. It takes from the employer the right to say that he should pay nothing because he has not been at fault, and that to force him to pay on any other ground is confiscation. Where the Workmen's Compensation Law says "may," this bill says "must." While assent by the motorist might be deemed to follow his use of the system of car registration as a condition of using his car on the roads, it is difficult to see what assent can be found in the act of a

pedestrian in crossing a street. Yet his common law rights are in no wise saved.

We ought to understand clearly, if any such step as that proposed is to be taken, just why it is taken. If it is that it is intrinsically desirable, socially and economically wise, matters of mere machinery may perhaps be adjusted although as pointed out in the Fourth Report of the Judicial Council (pages 31–32), some serious constitutional questions may arise. But we very much doubt if the average citizen, maimed for life by a responsible motorist, is ready to consent that his compensation be held down to twenty dollars a week with a maximum total of five thousand dollars, and we have the same doubt if the members of the great motoring public, which becomes vocal each year over mere insurance rates, are ready to bear the burden of compensating not only those who are injured without fault on their part, but even those who have only themselves to blame for their injury. The fund for such compensation would have to be raised either through insurance or by a gas tax and in either case at the cost of motorists, for it certainly should not be saddled on the general public.

We have already referred to the plan as a "blind" experiment. That the experiment is necessarily blind appears from the fact its cost as estimated by the Columbia Research Committee in the passage in their report already quoted is of necessity largely guesswork; that it would be 90 to 98 per cent of the cost of the present method of insurance if the scale of benefits of the Massachusetts Workmen's Compensation Law were adopted, and about 148 to 161 per cent of the present cost if the New York Workmen's Compensation scale of benefits were adopted, provided "non participating" carriers, or in other words, stock insurance companies, were used. The committee estimates that the cost might be less with mutual companies or with state insurance. When we consider, however, that even the history of Workmen's Compensation benefits, in view of the constant extension of those benefits in amount and in the scope of the injuries to which they are applied, as a result of continuous demands for legislation, is today causing those familiar with the situation grave concern as to the future of Workmen's Compensation and its possible breakdown because of its increasing cost and its consequent burden upon industry for injury or ill health not peculiarly connected with the industry,* it is unsafe to rely upon any guesswork as to the ultimate cost of similar experiments in the automobile accident field in a community full of automobiles and of

*See Appendix B, p. 97.

claim-minded litigants, with the constant pressure for legislation and increase of the amount of any scale of benefit payments which might originally be established. The experience of the Insurance Commissioner's office in Massachusetts in endeavoring to fix fair rates to cover compulsory insurance cost shows how difficult it is to measure in advance the cost of so uncertain an experiment.

Is there anything in the fact that automobile accidents happen on the highways which should lead the community to select those accidents for the purpose of socializing the loss caused by them in the form of compensation based on liability without fault? A person may be just as dead or just as much injured in a variety of ways as he may be by an automobile on the highway, and there seems to us no more reason for imposing the cost of one on the community more than another.

In these days, when communities are faced with the mounting public cost of government and of the incidental operations and requirements of government, caution in these matters should be observed.

In the condensed report of the Columbia Research Committee which appears in the report of the Committee on Accident Litigation to the Conference of Bar Association delegates at Washington in October, 1932 (reprinted in Appendix B), the reasons for liability without fault are stated as follows:

"Every year in the United States motor vehicles kill more than 30,000 persons and injure more than a million. The question involved is not merely that of justice to the injured persons, but the broad question as to who should properly bear the loss to the community from the disablement of all these people, a very large proportion of whom are injured by irresponsible persons or under circumstances in which no recovery is possible. The burden of this loss falls on their doctors, hospitals, landlords, tradesmen, neighbors and friends, whereas it should properly fall on motorists as a class. Were it not for the use of motor vehicles these injuries and losses would not occur, and when they do occur, their compensation should be part of the ordinary cost of operating motor vehicles. The activity of operating motor vehicles, which by such operation secure the economic advantages incident to such operation, should provide adequate compensation for the economic losses also incident thereto."

This argument was well stated in a somewhat similar way by Mr. Weld A. Rollins in a memorandum submitted to the Attorney General of Massachusetts in 1919 which was quoted in the Fourth Report of the Judicial Council (p. 32). As Mr. Rollins put it:

"There is a substantial amount of risk in large numbers of motor vehicles using the highways. However careful they all may be, they will inevitably cause some damage to others. If they wish to use the highways for a purpose hazardous to others, there is no reason why they should not be required to pay for the harm done. There may not be negligence, but there is hazard, and hazard ought to serve for as good a basis of aggregate responsibility as negligence."

Let us test these arguments. We have obtained copies of the 1932 edition of "Accident Facts," a booklet prepared by the Statistical Bureau of the National Safety Council. The chairman of this Statistical Bureau is Dr. T. F. Murphy of the United States Bureau of the Census. The following table taken from this booklet (p. 7) is illuminating.

Accidental Injuries [Classified] by Character of Disability, 1931*

Character of Disability	Total	Industrial	Motor Vehicle	Home	Other Public
Total	9,500,000	1,567,000	1,228,500	4,379,000	2,420,000
Death	97,000	17,000	33,500	29,000	20,000
Permanent Disability	348,000	60,000	95,000	130,000	70,000
Temporary Disability	9,055,000	1,490,000	1,100,000	4,220,000	2,330,000

Source: Approximations of the National Safety Council based on data from U. S. Census Bureau, state industrial commissions, insurance companies, and individual industrial establishments.

The table indicates not only that it is dangerous to be alive at all, but that the hazards of ordinary home life and from accidents from causes other than motor vehicles and industrial accidents far outnumber the motor vehicle hazards even with the enormous increase in the number of motor vehicles in recent years.

The Workmen's Compensation Act was adopted because there was a widespread feeling that industry should care for those injured in the course of their employment. It is difficult to see why pedestrians and especially passengers engaged in their own business or pleasure should have any more claims for public relief than any other persons who meet misfortune through no one's fault or through their own fault. The following table shows that the "economic

* Items in total column do not equal the sum of those in succeeding columns due to the overlapping of motor vehicle and industrial deaths and injuries. See explanation [below].

Classifications of Fatal Accidents. Of the 97,000 accidental deaths in 1931, 33,500 are classified as motor vehicle, 29,000 as home, 20,000 as public (not motor vehicle), and 17,000 as industrial. Of the latter total it is further estimated that 2,500 occurred in motor vehicle accidents. The elimination of this duplication leaves a net total of 97,000.

Non-fatal Injuries. The absence of adequate data makes impossible any accurate statement regarding the number of non-fatal injuries in the various classifications. Table 2, classifying both fatal and non-fatal injuries by character of disability, should, therefore, be looked upon as only a very rough approximation and subject to material revision upon the development of new information.

In round numbers the table shows that for all accidents there are about 97 non-fatal injuries for each fatality, of which 4 are permanent disabilities and 93 temporary disabilities. For industrial accidents there are about 90 non-fatal injuries for each death; for motor vehicle injuries the ratio is about 35 to 1; for home injuries 150 to 1, and for other public injuries 120 to 1.

In arriving at these approximations the attempt has been made to include in the non-fatal groups only those injuries causing inability to carry on the usual activities beyond the day of the injury.

loss" caused by the "fatal," "permanent" or "temporary" injuries to these other persons is greater than that caused by motor vehicles

***TABLE (from "Accident Facts," 1932 Edition, p. 8)**
Certain Costs of Accidents Resulting in Personal Injury or Death, 1931

Type of Cost	Total*	Industrial	Motor Vehicle	Home	Other Public
Total	**$2,308,000,000**	**$643,000,000**	**$703,000,000**	**$545,000,000**	**$512,000,000**
Wage Loss	$1,808,000,000	$500,000,000	$569,000,000	$408,000,000	$405,000,000
Medical Expense	$327,000,000	$39,000,000	$72,000,000	$128,000,000	$94,000,000
Overhead Cost of Insurance	$173,000,000	$104,000,000	$62,000,000	$9,000,000	$13,000,000

Source: See note to last Table.

and yet these other persons are expected to protect themselves by accident insurance or look to the person whose fault is responsible for their injury.

It has been suggested that the requirement of compulsory motor vehicle insurance might reasonably be limited to the protection of careful pedestrians, leaving those who use automobiles to carry their own accident insurance if they want protection. People whether drivers or passengers get into automobiles, knowing them to be dangerous, for their own benefit in business or pleasure. Such a limitation of compulsory insurance might go far toward eliminating the so-called "fake" or exaggerated claims many if not most of which are probably made on behalf of persons in motor cars rather than pedestrians.** The policy of such a limitation has not re-

* Items in total column do not equal the sum of those in succeeding columns due to the overlapping of motor vehicle and industrial deaths and injuries.

Costs. The wage loss, medical expense, and overhead insurance cost involved in accidental deaths and injuries during 1931 exceeded two and one-quarter billion dollars. Table 3 contains rough approximations of these costs for the four principal types of accidents. The table attempts to cover only those accidents in which there was personal injury or death. The accidents that might have resulted in injury are not included. The wage loss figures include arbitrary charges for deaths and permanent disabilities.

There are certain costs even of these accidents that are too remote and too indeterminable to permit an approximation. In industry particularly interrupted production schedules, property damage to material, machinery, etc., the expense of hiring and training new workers, and many other items are of great importance as a cost to industry, but they are not included in this study due to lack of data.

The details of the estimates, with supporting evidence, are obtainable from the National Safety Council. Any new data or suggestions tending to improve the accuracy of these approximations will be sincerely welcomed. For emphasis, it is repeated that the grand total figure, $2,308,000,000, does not include any estimate for those accidents not resulting in personal injury, nor does it include any costs of personal injury accidents other than the three specific items shown.

** The following table indicates that pedestrians are involved in somewhat less than half of the fatal accidents and presumably also of the non-fatal accidents because collisions are apt to involve injuries to more than one person.

TABLE (from "Accident Facts," 1932 Edition, p. 31)

Motor Vehicle Deaths in 1930, Distributed According to Place and Type of Accident, and by Age of Person Killed

Type of Accident	All Ages	0-4	5-14	15-64	65 and Over
			Total Urban and Rural*		
Total	**32,900**	**1,480**	**3,630**	**22,910**	**4,880**
Collision with Pedestrian	14,320	1,050	2,650	7,300	3,320
With Other Motor Vehicle	6,810	180	270	5,710	650
With Railroad Train	1,890	70	110	1,650	60
With Electric Car	490	10	20	440	20
With Bicycle	380	10	150	200	20
With Horse-Drawn Vehicle	480	10	30	360	80
With Fixed Object	2,830	60	60	2,510	200
Non-Collision	5,700	90	340	4,740	530
			Urban Districts*		
Total	**13,200**	**730**	**1,680**	**8,780**	**2,010**
Collision with Pedestrian	8,410	600	1,380	4,660	1,770
With Other Motor Vehicle	2,510	80	120	2,160	150
With Railroad Train	480	10	20	440	10
With Electric Car	290	10	20	250	10
With Bicycle	180	10	80	80	10
With Horse-Drawn Vehicle	40	0	10	20	10
With Fixed Object	720	10	20	670	20
Non-Collision	570	10	30	500	30
			Rural Districts*.		
Total	**19,700**	**750**	**1,950**	**14,130**	**2,870**
Collision with Pedestrian	5,910	450	1,270	2,640	1,550
With Other Motor Vehicle	4,300	100	150	3,550	500
With Railroad Train	1,410	60	90	1,210	50
With Electric Car	200	0	0	190	10
With Bicycle	200	0	70	120	10
With Horse-Drawn Vehicle	440	10	20	340	70
With Fixed Object	2,110	50	40	1,840	180
Non-Collision	5,130	80	310	4,240	500

Source: Approximations of the National Safety Council based on records of the U. S. Census Bureau, state motor vehicle departments, city police departments, etc.
* Urban includes cities of 10,000 population or more; remainder of country is classified rural.

ceived much if any discussion, so far as we are aware. Possibly it may receive more in future if the cost of compulsory insurance continues to increase. However that may be, we call attention to it, not for the purpose of recommending it, but to offset the "social" or "economic" argument advanced in favor of selecting motor vehicle injury losses for "socialization" by extending compulsory insurance to cover liability or "compensation" without fault, leaving all other non-industrial injuries unprotected.

Above all, we should deplore haste in so great a reversal of public policy. Almost from the dawn of legal history the policy of the law has been to let the consequences of misfortune lie where they fall unless cause appears to shift the burden elsewhere. For centuries that cause has been found in fault. The compensation plan discards that test completely. A change of base in a matter of such widespread social import and consequence is nothing to be done lightly or hastily. It calls for the most mature consideration and the most careful study of its probable conse-

quences, social as well as economic. Mere difficulties with the present legal machine do not justify such a change until it appears not only that there is no other way out but also that the advantages of the change in mechanism are not overborne by the social disadvantages which might result. Questions of machinery seem to us of relatively small importance compared with the more fundamental question whether a departure from all the experience of the past is intrinsically desirable.

2. House 618 as a Remedy for Congestion

If, on the other hand, the purpose of the bill is relief of congestion in the courts, then it should be considered whether our condition is so desperate as to call for such a radical departure from our traditional rule of no liability without fault in such cases. We ought to be clear that no more moderate step, no less extreme measure, will attain the same end. Suggested experiments of a jury fee, of an increased entry fee in the jury court, have not been tried. Neither has the suggested plan that the benefits of compulsory insurance should be available only if jury trial be waived. Yet this bill, House 618, would abolish not only jury trial but a judicial hearing in the largest class of litigation obstructing the courts. The congestion is mainly in connection with jury trials. At that point, as already pointed out, it appears to be getting progressively worse, and if the present law is to stay as it is and all suggestions for relief even if experimental are to be persistently rejected, we see no reason to think that the Superior Court can by its own efforts rid itself of the incubus. The problem is two-fold, — to cut down the present overload, and to cut off or at least curtail future congestion at its source. While it will take time and money, we think the first can be accomplished by a liberal reference to auditors, such as the court is now practising.

As already stated, we are still of the opinion that the annual increase should be restricted by putting a larger share of the cost on those who insist on the expensive form of trial, thereby inducing plaintiffs to seek the District Courts or the less-expensive method of trial without jury in the Superior Court. There is already a large plant in operation in the District Courts manned largely by part-time judges. Studies of operating cost have often brought out the excess cost per case in the part-time court. If business can turn them into full-time courts, it means lessened waste and will also remove a good deal of the friction and complaint which is found where local special justices are obliged to practice law sometimes in their own courts to earn their living.

The commission idea contained in House 618 as well as in the recommendations of the Columbia Research Committee is based on the established practice of administering workmen's compensation through a commission, but it is still a question in the minds of some whether even workmen's compensation might not in the long run be placed under the administration of courts if the court system were reorganized in such a way as to make it practicable.

At all events, we do not believe in extending the plan of creating administrative commissions for such business. We believe it wiser to adjust the judicial organization to the changing needs of judicial business.

Discussion of House 777*

House 777 in effect adds a new court to our already excessive number. Calling it a commission does not change its nature in view of the fact it has all the attributes which attend the exercise of the judicial function. It is declared to be a court of record. It

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* House 777

House 777 approaches the matter from a somewhat different angle. It proposes to leave the present law of liability for negligence, but for the administration of that law in the first instance to create an Accident Commission of seven members, to be designated and commissioned by the Governor and Council "Justices of the Peace" who

". . . at the time of such designation shall be attorneys-at-law actively engaged in the practice."

Their tenure of office is to be four years and the commission is to have authority to appoint referees in the several counties with full powers of a commissioner and to be compensated on a per diem basis fixed by the commission. There is to be a clerk of the commission with authority of a clerk of a "court of record" and the commission

". . . shall be a court of record and shall adopt a seal" and have "such other powers as are incident to a court of record."

It is to have "exclusive original jurisdiction" of actions for personal injury or property damage "as the result of the negligent use or operation of a motor vehicle."

It may adopt rules and "action shall be instituted by complaint," of which copy shall be served on the defendant. The power to interrogate shall be optional, the answer shall be definite, the procedure shall be simple and summary, but the rules of evidence shall be followed.

"Decisions of commissioners or referees together with a statement of the evidence shall be filed with the clerk and shall be admissible in evidence on appeal."

Parties may stipulate that the decision of the commissioner shall be final.

Hearings shall be fixed, five days' notice given and the convenience of all parties shall be considered in determining whether the hearing shall be in the county where the plaintiff resides or where the accident occurred.

"Any party aggrieved by decision of the commission may enter a notice of appeal ten days after decision."

Any commissioner or referee may appoint an impartial and disinterested physician to examine the party alleging physical injury or an impartial and disinterested appraiser to appraise alleged damage to property, and receive the testimony of such physician orally at the hearing. Any commissioner or referee may in his discretion conduct an independent investigation of any case pending before him and may summon evidence thereby disclosed.

Appealed cases will go to the Superior Court for rehearing. Motor vehicle cases pending in the Superior Court when this act takes effect may be referred to this commission for trial.

Section 26 of this act declares it to be an emergency law because the congested condition of the courts of the commonwealth constitutes an emergency.

has a clerk and a seal. It may determine facts, compel attendance, punish for contempt, enter judgment and issue execution. These facts present an initial difficulty.

Section one provides that the judges of that court called "commissioners" shall be designated from those holding commissions as justices of the peace and that when their commissions as such justices expire they shall go out of office as commissioners. The constitution, chapter III, article 1 provides that, "All judicial officers duly appointed, commissioned and sworn, shall hold their offices during good behavior, excepting such concerning whom there is a different provision made in this constitution." The only exceptions are the justices of the peace who serve for seven years under article III of chapter III.

We do not think the constitutional provisions as to judicial tenure can be circumvented as proposed in this bill and we strongly advise that no such experiment be undertaken without an advisory opinion from the Justices of the Supreme Judicial Court.

Section two provides that the commission may appoint referees in the several counties who shall have "the full powers of a commissioner." If they have such powers, they are judges, whatever they may be called, and only the governor can appoint judicial officers under the constitution. Beyond these plain instances there are others of a doubtful constitutionality, and many mechanical deficiencies and omissions which would demand a thorough revamping of this bill if any use were to be made of it. We have not thought it profitable to discuss them in detail, for there are two fundamental features to which we are utterly opposed. The plan brings back the discarded method of the double trial and it precludes our existing system of District Courts from carrying its increasing share of an increasing judicial load.

Our first objection, in its application to smaller cases, was comprehensively covered in Judge Lummus' "Failure of the Appeal System." It was further discussed in the report of the Suffolk Inferior Court Commission of 1911. In consequence, the single trial replaced the double trial within the jurisdiction of the Boston Municipal Court in 1912 (see G. L. c. 231, sec. 109), and throughout the rest of the state in 1922 (St. 1922, c. 532, section 8). Except for the feature of centralized control, which is desirable, the proposition in House 777 does not materially differ from one which would require all motor vehicle cases to be first tried in the District Courts, with a full retrial in the Superior Court. Considering that even under the much restricted jurisdiction of the District

Courts under the old double trial system 40% of their findings were appealed, a percentage which would greatly increase if the larger cases had to take the same course, we believe that such a plan would be a wasteful backward step. What ground for hope is there that any smaller percentage of commission decisions would be appealed for a complete retrial? When the need is to lessen congestion, how can the restoration of the double trial do other than increase it?

A conservative estimate of the motor vehicle tort cases now annually brought in the Superior and District Courts is 40,000. It does not seem reasonable to us to suppose that any seven commissioners, working on lines of common law liability, can handle any such volume. House 777 in substance would create a new and numerous group, paralleling our District Court system, working in the main on a part-time basis, restoring the double trial system.

We think it a wasteful proposition and we favor instead a rearrangement of the burden on our present judicial force.

The current experiment with the use of auditors in accident cases already described is accomplishing to some extent the purpose of the plan proposed by House 777 without creating a new parallel system of tribunals with additional overhead costs. As already explained we believe that more radical measures are needed. All our judicial history is a picture of the growth of business crowding work downward toward the base of the judicial pyramid — common-law trial work out of the supreme into the superior, and thence partly into the district courts — equity out of the supreme into the superior and probate and land courts — divorce into the probate courts — these are only instances of what has gone on and will almost inevitably continue. And this means that the baseline must be prepared to receive the load, and handle it satisfactorily or it will be squeezed sideways into administrative commissions.*

Report Requested by the Legislature on House No. 620

The Joint Order of March 24, 1932, included a request for a report on this bill. The bill provides for a "liability bond" covering property damage up to $500 to be a lien on the vehicle and a "paramount" lien for the first $100 for any claimant or subrogated surety, registration to be revoked if a claim "definitely determined" is not paid by the obligor.

* The recent volume "In Quest of Justice" by Claude Mullens, Esq., an English barrister, indicates in chapter XV that a similar movement of business in the direction of the lower or county courts is seriously advocated because of the openly expressed dissatisfaction of business organizations, such as the London Chamber of Commerce, with the expense and inconvenience involved in litigation. See also an article by Mr. Mullens in the "Quarterly Reveiw" for April, 1932.

The legislature by St. 1932, c. 304 provided that registration should be revoked if a judgment for property damage against an uninsured car is not paid.

Representative Smith also submitted to the Secretary a substitute bill to provide a "deductible" policy bond subjecting the obligor to liability for $50 property damage without insurance indemnity and with revocation of registration if not paid.

The subject of deductible policies was quite fully discussed in the report of the Commission in Motor Vehicle Insurance already referred to (Senate 280 of 1930 at pp. 27–30). We do not recommend House No. 620.

Venue in Motor Vehicle Actions in District Courts

To encourage the use of the less expensive courts, especially in motor tort cases, it seems to us advisable that there be a change in the law affecting the venue of transitory actions applicable to district courts. The law should be so changed, broadly speaking, that actions may be brought in any district court in the county where the defendant resides or has his usual place of business.

The subject of venue (meaning the place in which an action can be brought) is somewhat technical. Stated generally, the place of action in the Superior Court is fixed by the place of residence or business of either party or in trustee process of the trustee. In district courts, the residence or place of business of the defendant controls or in trustee process that of the trustee.

District courts should be open with as little hindrance as possible to all who desire to use them. It may well be argued that all restrictions of county lines should be removed, but we deem it best, for the present, at least, to so amend the law that any district court in any county may be open to a litigant in motor tort cases. Thereby parties will be enabled to choose their tribunal within a certain area. Any such change should not however affect assigned claims because of possible abuse. Further, in order to make the change effective, the courts should be empowered to transfer or consolidate cross actions brought in different courts and there should be provision to cover a case where one or more of several actions arising out of the same accident is brought in the Superior Court.

We submit the following:

Draft Act

Section 1. Section two of chapter two hundred twenty-three of the General Laws is hereby amended by inserting after the word "eighteen" in the second line

thereof the words "and in section seven of this chapter" so that said section two shall read as follows:

Except as provided in section twenty-one of chapter two hundred eighteen and in section seven of this chapter a transitory action in a district court shall be brought in the county where one of the defendants lives or has his usual place of business, or, if commenced by trustee process, in the county where all persons named in the writ as trustees live or have their usual place of business, and, in either case, in a court within whose judicial district one of the parties lives or has his usual place of business except that an action commenced by trustee process may be brought in the Municipal Court of the City of Boston if any trustee resides or has his usual place of business in Suffolk County.

Said courts shall have jurisdiction of a transitory action against a defendant who is not an inhabitant of the commonwealth, if personal service or an effectual attachment of property is made within the commonwealth; and such action may be brought in any of said courts in the county where the service or attachment was made.

Section 2. Section seven of chapter two hundred twenty-three is hereby amended by adding new paragraphs at the end thereof as follows:

A transitory action brought in a district court to recover damages for injury to the person, including death, or to property as a result of the alleged negligent or other tortious use or operation of a motor vehicle or trailer, excepting any action in which the plaintiff is an assignee of the cause of action, shall be brought in a district court in the county where one of the defendants lives or has his usual place of business or if commenced by trustee process, except as to the Municipal Court of the City of Boston as otherwise provided in section two, in the county where all of the persons named in the writ as trustees live or have their usual places of business. If brought in any other county the writ shall abate and the defendant shall be allowed double costs.

A district court may upon motion by a defendant in any such cause, except one brought in the wrong county, order it and all papers relating thereto transferred to another district court within the same county and within whose judicial district any defendant dwells. The papers relating to such cause shall thereupon be transmitted by the clerk to the district court to which the said cause has been transferred.

In all such cases wherein cross actions or more than one action arising out of the same accident have been begun in different district courts in the same county, the Superior Court may upon petition of any party and in order that the cases may be tried together, order one of said actions transferred to the court wherein the other is pending. Any cause transferred in the manner above authorized shall thereupon be entered and prosecuted in said court as if originally returnable therein. If separate actions concerning motor vehicle accidents have been begun against joint defendants in adjoining counties and in district courts, the Superior Court may, upon motion and in order that the cases may be tried together, order one of said actions transferred to the court wherein the other is pending and any cause thus transferred shall thereupon be entered and prosecuted in said court as if originally returnable therein.

Whenever cross actions or more than one action arising out of the same accident have been brought and one or more actions shall have been brought in a district court and the other or others in the Superior Court, the action or actions pending

in the district court or courts may with all the papers relating thereto on petition to the Superior Court by any party in any of such actions be removed and transferred to the Superior Court without expense and shall not be subject to the provisions of section four of chapter twenty-six of the General Laws as amended.

The Power in the Superior Court to Consolidate Several Actions Brought in Different Counties for Trial Together in One County

One motor vehicle accident often causes injuries to many persons and several suits for damages resulting from the same accident are brought in the Superior Court in different counties. When juries are not claimed, or where auditors are appointed, the practice of some judges of the Superior Court is to arrange that all cases arising out of a single accident shall be heard together or sent to the same auditor; but doubts have been expressed to us as to the authority of the Superior Court to transfer them to another county and order all to be tried together when jury trials are claimed. These doubts appear to be based upon the opinion in *Stoneman* v. *Coakley*, *266 Mass. 264*. This case was an equity suit in which issues for the jury were asked. In another county there was an action at law between the same parties involving some of the same issues for which in the equity case a jury was asked. The Superior Court judge ruled that he had no power to transfer the equity case to the county where the law case was pending and to order the issues tried together. The Superior Judicial Court sustained this ruling. We do not propose any limitation on the power of the court to prevent double trials or on the control of equity cases under s. 18 of Ch. 214 but to remove any doubt as to the power of the court to transfer cases for trial from one county to another and to order them tried together whenever the issues are the same we propose the following act. It is waste of time and expense to have two or more juries in different counties passing on the same issues arising out of one automobile accident or other single transaction. It is not uncommon for the court to consolidate such actions for trial in one county by consent of parties.

We recommend the following

Draft Act

Section 1. Chapter two hundred thirteen of the General Laws is hereby amended by inserting after section five the following new section

Section 5-a. Whenever there are pending in the Superior Court indifferent counties actions at law to recover damages or indebtedness arising out of the same accident, incident or transaction, the Superior Court may order said actions to be

tried together in such county as it may designate. This act shall not limit by inference the powers of the courts in regard to consolidation of causes.

PETTY MOTOR VEHICLE OFFENCES

In view of the current public interest in methods of public economy we submit the following suggestion:

In previous reports we have discussed the problem of dealing with these causes in such a way as to reduce the burden on the courts, police officers, parties and witnesses, to lessen the expense and inconvenience to all concerned and to relieve a large number of our citizens from what is regarded as the stigma of a "criminal record."

The regulations covering the operation of motor vehicle offences which are the basis for what we call "petty offences" are what were known in the early days of Massachusetts as "prudential" rules as distinguished from the criminal laws. We sympathize with the feeling of many reputable citizens that no criminal record should attach for the violation, usually unintentional, of regulations and administrative rules. A part of this irritation is caused because of the necessity of furnishing to the probation officers detailed personal information. This information is necessary if the central bureau of the probation commission has to include records in this class of offences. The law does not now require the clerk to transmit a record of most of the cases coming under our general descriptive title to the Registrar of Motor Vehicles. There seems to us to be no logical reason why the probation officers should be obliged to do for the probation commission what the clerk is not obliged to do for the registrar. Probation officers have as a rule more than they can attend to at the present time of important matters. The probation commission's records are invaluable and should not be burdened with unnecessary references. Therefore, we approach this question this year from an entirely different angle, namely that of excepting a certain type of motor vehicle offences from the requirements of reports by the probation officers to the commission on probation and the removal of the record of conviction of such offences from the class of "criminal records."

It is our opinion that the plan suggested would result in a material saving in public expense and labor. We submit a

Suggested Draft Act

An Act concerning Petty Motor Vehicle Offences, to make unnecessary the reports thereof and to provide that convictions thereon shall not constitute a criminal record.

Section I. Sec. 99 of ch. 276 of the General Laws as amended by Acts of 1929, ch. 179 is further amended by adding thereto the following sentence:

"No report shall be required hereunder of any violation of any rule or regulation made by the Department of Public Works under authority of sec. 2 of ch. 85 of said General Laws or of any rule, regulation, order, ordinance or by-law regulating motor vehicles or their operation established by any city or town or by any commission or body empowered by law to make such rules or regulations therein or of any violations of provisions of law regarding the equipment or use by motor vehicles of number plates, mirrors, lamps or lights, brakes, mufflers, horns or other means of signalling, lock or other device to prevent automobiles being set in motion by an unauthorized person."

Section II. Sec. 21 of ch. 233 of the General Laws is hereby amended by adding thereto the following sentence:

"Conviction of a witness of any violation of any rule or regulation made by the Department of Public Works under authority of sec. 2 of ch. 85 of said General Laws or of any rule, regulation, order, ordinance or by-law regulating motor vehicles or their operation established by any city or town or by any commission or body empowered by law to make such rules or regulations therein or of any violations of provisions of law regarding the equipment or use by motor vehicles of number plates, mirrors, lamps or lights, brakes, mufflers, horns or other means of signalling, lock or other device to prevent automobiles being set in motion by an unauthorized person shall not be shown for such purpose."

Section III. Sec. 13 of ch. 31 is hereby amended by adding thereto the following sentence:

"No person shall be obliged to report in his application any conviction for violation of any rule or regulation made by the Department of Public Works under authority of sec. 2 of ch. 85 of said General Laws or of any rule, regulation, order, ordinance or by-law regulating motor vehicles or their operation established by any city or town or by any commission or body empowered by law to make such rules or regulations therein or of any violations of provisions of law regarding the equipment or use by motor vehicles of number plates, mirrors, lamps or lights, brakes, mufflers, horns or other means of signalling, lock or other device to prevent automobiles being set in motion by an unauthorized person."

The Need of an Appellate Body of Judges for the Summary Review of Sentences in the Municipal Court of the City of Boston and Avoidance of Double Trials on the Facts in Misdemeanor Cases in that Court.

In our last report, for reasons there stated in detail with figures as to the numbers of entries and appeals, the Council stated that the information as to operation of the present system of criminal

appeal in the district courts "indicates an impairment of public safety and an enormous and futile waste of public funds in the duplication of work in two courts" (see pages 17–19). They recommended a plan to be tried out in the Municipal Court of the City of Boston as other successful experiments in procedure have been tried out in the past. A bill for this purpose was submitted. In view of the public demand for better methods of dealing with crime and the general recognition of the importance of eliminating waste of time and money involved in duplication of judicial work, we again suggest the favorable consideration of this recommendation of last year.

DRAFT ACT

(This draft appears in our 7th Report, pp. 67-70.)

WAIVING INDICTMENT IN CRIMINAL CASES

The Massachusetts Bill of Rights provides in Article XII that no one shall be punished for a crime by death or by a sentence to the state prison without indictment by a grand jury. (*Jones* v. *Robbins*, *8 Gray 329; M. L. Q. Aug. 1922, 214, Aug. 1923, 51*). In most cases, persons who have been indicted by a grand jury have been previously charged before a district court and held for the grand jury on the ground of probable cause, so that the process of indictment is a second public accusation by twenty-three men of a person who has already been held on probable cause by one man. In the larger counties where a grand jury is in session almost continually, there is little delay between the two proceedings; in other counties, however, in which several months may elapse after a man has been charged in the District Court and before the next sitting of the grand jury for the county, the accused person may be obliged to remain in jail even if he wishes to plead guilty or if he would prefer to be charged by complaint and put to trial at the next sitting of the court for criminal business instead of waiting for the more formal second accusation by indictment. In such cases, which are more common than is generally realized, the grand jury is put to unnecessary labor at unnecessary public expense and the accused person is required to wait in jail at the public expense for no useful or reasonable purpose.

Grand jurors now receive a compensation of six dollars per day, and travel for each day (see G. L. c. 262, s. 25).

In 1929, the legislature provided that in criminal cases a defendant might waive a trial by jury and request a trial by the court,

the court having previously decided that there was nothing in the constitution to stand in the way of such a proceeding as the right to trial by jury was not a jurisdictional requirement, but merely a constitutional privilege of the individual which might be waived (see *Com.* v. *Rowe 257, Mass. 172*). In the same way, the much less important right to be accused by indictment of a grand jury is another personal privilege which may be waived. If a man who has been bound over for the grand jury, whether he is held in jail or not and whether he wants to plead guilty or not, wants to get ahead and get through with his case and does not care about the formality of an indictment, if he can get to trial sooner without it, there seems to be no reason why he should not be allowed to waive the whole proceeding. Why should the state force him to wait in jail for the grand jury to act? In such a case, an indictment is merely a bit of formal red-tape. If the prisoner does not care about it, why should the state keep him waiting merely to put the grand jury to the bother of passing on his case at the public expense? Article XI of the Bill of Rights provides that a man "ought to obtain right and justice . . . promptly and without delay."

We suggest that a statute be passed authorizing a defendant who wishes to do so to waive indictment by a grand jury in a written application to the court and ask to be arraigned as soon as possible upon the complaint upon which he is held. Upon the filing of such an application the district attorney may, with the approval of the court, proceed against the defendant by complaint and the defendant shall be held to answer and the court shall have as full jurisdiction of the cause as if an indictment were found.

A person held for the grand jury should be notified of his right thus to waive indictment and apply for prompt arraignment. If the district attorney desires to charge the person thus held with any offence other than that upon which he has been held for the grand jury, he may, before consenting to the application of the defendant, formulate a complaint charging such other offence or offences and serve the same upon the defendant in order that he may have an opportunity to waive indictment upon such other charges. If an application for waiver of indictment as to such other charges is subsequently filed, the court shall require an affidavit of service of such complaint upon the defendant as part of the record of the case before approving of such procedure.

We are informed that procedure somewhat similar to that suggested has been in successful operation in Minnesota for years

and is frequently taken advantage of by defendants, thus avoiding unnecessary work and the incidental public expense of grand jury proceedings (see *Mass. Law Quart.* January, 1922, p. 108).

This proposal without any draft of legislation was, we are informed, called to the attention of the special Commission to Investigate the Criminal Law under chapter 34 of the Resolves of 1923, but that commission apparently did not consider the matter within the scope of the resolve (see Report, House 224, p. 2, of 1924; Reprinted "Mass. Law Quart." Jan., 1924).

That commission, however, reported the following figures as illustrating the growth in volume of the work of the grand juries and expressed the belief that much might be done by changes in the direction of promptness, fairness and saving of "a tremendous expense" in the administration of the criminal law "with the system now in vogue" which "is necessarily wasted." The figures showed that cases presented to the grand jury throughout the commonwealth increased from 2,334 cases in 1912 to 5,344 cases in 1932.

"Of those presented in 1912, about 18% of 'no bills' were returned, while of those presented in 1922, about 10% of 'no bills' were returned. In 1912 there were 1,614 indicted and 938 of the defendants indicted in that or previous years claimed a trial. In 1922, 4,676 were indicted and 619 of the defendants indicted in that or previous years claimed a trial. In 1912, 198 were sent to the State Prison, whereas in 1922 only 188 were sentenced to that institution."

What the figures since 1922 are, we have not yet ascertained, but presumably they are not less than those in 1922 and the proportion of defendants indicted thus shown to actually claim a trial indicates how small a proportion of them really wished a trial and how many of them would, in all probability, take advantage of an opportunity to waive indictment and request procedure by complaint, thus reducing public expense of 23 grand jurors at $6 each per day who are now required to do the unnecessary work of considering these cases.

In the interest of justice to the defendant as well as of prompt and more economical administration of the criminal law, we recommend the following

Draft Act

Section 1. Section four of chapter two hundred sixty-three of the General Laws is hereby amended by adding at the end thereof the following sentences:

A person committed or bound over for trial in the Superior Court under section thirty of chapter two hundred eighteen of the General Laws who wishes to waive indictment may apply in writing to the Superior Court to be arraigned forthwith upon the complaint upon which he is committed or bound over. Upon the filing of such an application, the district attorney may with the approval

of the court proceed against such person by complaint and the defendant shall be held to answer and the court shall have as full jurisdiction of the complaint as if an indictment were found.

All persons committed or bound over for trial in the Superior Court shall be notified by the court by which he was committed or bound over of their right thus to waive indictment and apply for prompt arraignment.

If the district attorney desires to charge a person thus committed or bound over with any offence other than that upon which he has been committed or bound over, he may before consenting to the application of the defendant prepare a complaint charging such other offence or offences and serve the same upon the defendant in order that he may have an opportunity to waive indictment upon such other charges. If an application for waiver of indictment as to such other charges is subsequently filed, the court shall require an affidavit of service upon the defendant as part of the record of the case before approving of such procedure.

The Superior Court shall by rule establish forms for such application to waive indictment and may by rule make such other regulations of procedure as justice may require.

NOTE.

Section 29 of chapter 212 authorizes a prisoner held "upon an indictment for an offence not punishable by death or by imprisonment for life or so held upon an appeal" to petition to be brought before the court at a civil session, and it is the duty of the keeper of the jail to notify him of his right and furnish him with a blank for it. We have suggested that the foregoing draft should be an amendment of chapter 263, rather than of chapter 212, because section 4 of chapter 263 has to do with criminal jurisdiction of the court, and it is necessary to create the jurisdiction to deal with the case upon a complaint if an indictment is waived.

ATTACHMENT OF WAGES BY TRUSTEE PROCESS

The present economic conditions have caused us to consider whether our existing statutory law in regard to the attachment of wages by trustee process should not be changed. Briefly stated, the present law permits a creditor to attach wages for personal labor and services, but if the debt be for other than necessaries an amount not exceeding twenty dollars "shall be reserved in the hands of the trustee and shall be exempt from such attachment. If the claim be for necessaries and the writ contains a statement to that effect an amount not exceeding ten dollars shall be so reserved" (G. L. c. 246, s. 28).

We understand that it is customary in many, if not most, of the industrial plants to follow the practice recognized by G. C. c. 149, s. 148, which provides that such employers "shall pay weekly each employee . . . the wages earned by him to within six days of said payment." As one week's pay is always due, a sum is thus left in the hands of the employer sufficient to enable a creditor to hold up by trustee process a substantial amount even allowing for the exemption. Many honest men who have fallen into debt without

fault are harassed by the attachment of their wages. They may be earning no more than sufficient properly to support their families or be making an honest attempt to pay their debts little by little. The withholding of even one week's pay by such an attachment makes for additional trouble and worry if not suffering. Employers naturally do not wish to be bothered by trustee writs which involve the annoying necessity of making an answer in court at a cost which is seldom repaid, and some of them naturally discharge men whose financial affairs cause them such annoyance. Even if these men are not actually discharged they live in fear that their jobs will be lost. Probably in many cases the worry makes for poor work and reduced output. Some collection agencies and some lawyers play on this fear in various ways and send notices containing covert threats of a loss of employment. Some of these notices are discussed later in this report. The debtor, fearing for his job, borrows money, often mortgaging his household furniture in order to maintain his family and thus becomes still more involved.

The policy of our national bankruptcy law and of bankruptcy or insolvency laws in general is that of relieving honest debtors from too much pressure and discouragement and giving them a chance for a new start, and this policy is sound even though the laws offers opportunities for fraud. But, bankruptcy proceedings do not fit the situation of wage-earners whose affairs involving relatively small sums need time rather than anything else although the policy involved is much the same. In considering what is the fairest procedure in the interest of justice, the balance lies between the danger of smoothing the path of the "dead beats" of whom we have plenty and who deserve no sympathy, and protecting from domestic disaster, the honest, but unfortunate and perhaps unwise, wage-earner who wishes to meet his debts however foolishly or ignorantly incurred, but cannot unless he can keep his job, support his family and have time.

When it is remembered that under the recent changes in the law of process after judgment effected by St. 1927, c. 334 a creditor can, without much delay, obtain a court order for weekly or monthly payments *based on ability to pay* after consideration of income and needs of the debtor and his family, and enforceable by contempt process for failure to obey such an order, we think deserving debtors and their dependents need some relief from the law as to attachment of wages more than creditors need the right to attach wages at will regardless of the effect of their attachment on the debtor and his dependents.

We recommend that wages for personal labor and services be made subject to attachment *only by leave first obtained* from the court issuing the writ of attachment, and submit the following:

Draft Act as to Wages and Trustee Process

Section 1. Section twenty-eight of chapter two hundred forty-six of the General Laws is hereby amended by striking out the said section and substituting therefor the following:

Section 28. Wages for personal labor and services of a defendant shall be subject to attachment only by leave first specially obtained from the court from which the writ of attachment issues. If such wages are attached for a debt or claim other than for necessaries furnished to the defendant or to his family, an amount not exceeding twenty dollars from the wages of each calendar week shall be exempt from such attachment. If such wages are attached on a claim for such necessaries and the writ contains a statement to that effect, an amount not exceeding twenty dollars for each calendar week shall be so exempt unless the court specifically authorizes a greater attachment by reducing the exemption to a specified figure, but in no case shall the amount to be exempt from attachment be reduced by the court below ten dollars from the wages of each calendar week. If an order for an attachment is made by the court, the amounts exempt from attachment under this section shall be paid to the defendant to whom they are due.

ABUSE OF TRUSTEE PROCESS IN GENERAL

In these days of closer study of wasteful cost, it seems an appropriate time to call attention to another abuse of our free system of attachment by trustee process which might well be remedied. The present law, G. L. c. 246, provides that all personal actions (with certain limited exceptions) may be commenced by trustee process and any person may be summoned as trustee of the defendant therein. If all the persons named in the writ as trustees dwell or have usual places of business in one county, the writ shall be returnable in that county . . . "otherwise it may be returnable in any county where any of them dwells or has a usual place of business."

It has frequently been called to the attention of the Judicial Council and has been a subject of current comment for years that this unrestricted right to join banks or other concerns as parties to a writ is frequently used merely as a "fishing expedition" to find out if there is any chance of catching funds of a defendant anywhere. A considerable number of banks are often served as trustees without any more reason to suppose that the defendant has deposits in them than the possibility that he may have a deposit in some bank somewhere. Each of the banks or other concerns thus served is obliged to appear to file an answer and perhaps file answers to interrogatories. In order to do this and avoid being caught in some

technical mistake, many of them have to employ counsel to attend to these details. Thus the depositors in our savings banks, and other business concerns subject to trustee process, are often put to useless expense when there are no funds to attach.

Persons are sometimes also joined in the writ as trustees for the purpose of securing jurisdiction of the case in some particular court which may be more convenient for the plaintiff's attorney, when a court in that county would not have jurisdiction unless a trustee having a residence or usual place of business within that county were named in the writ.

The amount of costs in any one case allowable is small and almost all plaintiffs or their lawyers regard any attempt to collect even such small costs as picayunish and it is more trouble than it is worth to collect them. The result is that the concerns served as trustees are subjected to the annoyance and constant accumulation of these items of cost which gradually increase in amount from year to year as wasteful expenses of the business. There seems to be no reason why the state should invite or tolerate this sort of abuse of its attachment law, the purpose of which was not to encourage "fishing expeditions" for funds at the expense of the business community, but to enable creditors to attach property of a defendant when they had some reasonable grounds for belief that a particular person summoned as trustee had such property.

Every time trustee process is used without reasonable grounds, the public has to pay the bill for the work in the clerk's office of filing and docketing the trustee's appearance and answer and other papers relating to the person thus summoned, so that a double wasteful burden is imposed both on the public and on the trustee who is unwarrantably summoned to appear and answer in a case with which he has no connection whatever.

We suggest that the familiar practice followed when witnesses are summoned be adapted to the summoning of a person as trustee and that a fixed sum be paid and tendered to the person thus summoned as trustee by the officer at the time of service, just as witness fees are paid or tendered when a witness is summoned, and that unless such fees are thus paid or tendered the trustee shall not be obliged to answer. Such fees shall be in lieu of all costs to the trustee except as the court may order.

We submit the following:

Draft Act

Section 1. Section one of chapter two hundred forty-six of the General Laws is hereby amended by adding at the end thereof the following sentences:

"No person shall be required to appear and answer as trustee in any action, suit or proceeding commenced by trustee process unless a legal fee of two dollars be paid or tendered to the person thus summoned if in a district court, or five dollars if in the Superior Court, for each service of the writ upon such person. by the officer at the time of service of the writ. The fee thus paid shall be in lieu of all costs unless the court shall order otherwise,"
so that the same shall read:

"*Section 1.* All personal actions, except tort for malicious prosecution, for slander or libel or for assault and battery, and except replevin, may be commenced by trustee process, and any person may be summoned as trustee of the defendant therein; but an individual who is not an inhabitant of the commonwealth, or a foreign corporation or association, shall not be so summoned unless he or it has a usual place of business in the commonwealth. No person shall be required to appear and answer as trustee in any action, suit or proceeding commenced by trustee process unless a legal fee of two dollars be paid or tendered to the person thus summoned if in a district court, or five dollars if in the Superior Court, for each service of the writ upon such person by the officer at the time of service of the writ. The fee thus paid shall be in lieu of all costs unless the court shall order otherwise."

Imitation of Court Process by Lawyers and Collection Agencies in Collection of Claims

For years, some lawyers, some collection agencies and some business concerns have used forms of notices to debtors deliberately drawn to imitate, as closely as they dared, a court summons for the obvious purpose of terrifying ignorant persons. We have already referred in our discussion of trustee process to the practice of threatening wage-earners. The following copy of a printed "demand" which has been called to our attention illustrates the methods used.

"State of Massachusetts *County of Suffolk* *Township of Boston*

Blank.....Creditor
vs.
Blank.....Debtor

Amount Due $15.00

As a demand by proper authority said debtor is duly notified that his personal earnings are about to be attached and garnisheed by said creditor in the District Court. And it is demanded that said debtor forthwith appear before the person named below and answer to said creditor's Attorney either in money or duly accepted order in such proportion of said earnings as are non-exempt with the Statute in such case made and provided. Otherwise further proceedings will be had, and said earnings be stopped and bound in the hands of the garnishee for non-exempt proportion above mentioned with the addition of statutory costs, and your employer must answer in court.

Said debtor will make prompt return of this demand to the person named below; otherwise the action will be prosecuted without delay.

Dated this.....day of.....193....

TAKE THIS NOTICE TO Blank, Attorney, Street, Boston, Mass.

He who is silent when he ought to have spoken shall not be heard when he ought to be silent, 96 U. S. Supreme Court, 720."

Another printed form reads as follows:

"*NOTICE of Impending LEGAL PROCEEDINGS*

State of Mass. County of Suffolk Township of Boston

Blank.....Creditor
vs.
Blank.....Debtor
Amount Due $21.00

As a demand by proper authority said debtor is hereby duly notified that he is about to be sued by said creditor in the Municipal Court..... and that unless he answer to said creditor forthwith, either in money or duly accepted order, the claim of said creditor will be taken as true as a rendered account and account stated, defenses estopped, and proceedings will be had accordingly.

To avoid costs said debtor will make prompt return of this demand to the person or firm below named; otherwise the action will be prosecuted without delay.

Dated this.....day of.....19.....

TAKE THIS NOTICE TO BLANK,.....Street, Boston.....

He who is silent when he ought to have spoken shall not be heard to speak when he ought to be silent. 96 U. S. Supreme Court 720.

Your house is attached."

Many lawyers have probably seen various forms, some of which we have seen with portentous Latin words, important-looking seals, to resemble a seal of court, and many other imposing details.

This sort of thing ought to be stopped. A simple letter from a lawyer is terrifying enough to many persons without all this unprofessional and deliberately false and deceptive embroidery. We think lawyers who use such forms should be disciplined by the court and that collection agencies that use them should also be subjected to consequences of some kind. Whether it falls within the definition of contempt of court, we are not sure, but we submit the following draft which we believe will be largely self-enforcing:

DRAFT ACT AS TO IMITATION OF JUDICIAL PROCESS

Section 1. Forms of demands or notices or other documents drawn to resemble court process shall not be used by lawyers, collection agencies or other persons in the collection of bills, accounts or other indebtedness. A district court on complaint of any person accompanied by a form alleged to be thus drawn may issue an order of notice to the person using it to show cause why he should not be ordered to discontinue such use on penalty of contempt.

RECOMMENDATIONS FROM THE ADMINISTRATIVE COMMITTEE OF THE PROBATE COURTS

The Judicial Council has received the following recommendations from the Administrative Committee of the Probate Courts, which was created at the suggestion of the Judicial Council, by St. 1931, c. 404. The first circular letter of that committee to the Probate Judges in March, 1932, was reprinted in the "Massachusetts Law Quarterly" for May, 1932, pp. 33–36.

The two proposals, submitted by the committee and, after consideration, approved and recommended by the Judicial Council for the reasons hereinafter explained, are as follows:

1. Elimination of the Requirement of Notice of Appointment of an Executor or an Administrator.

The statute requiring executors and administrators to give notice of their appointment was enacted more than a hundred years ago when conditions of life in sparsely settled communities were very different from those of the present day. However effective such notice may formerly have been no one will claim that, today, a notice by posting in a large city is of any value whatever. Notice by publishing, in the manner in which it is usually printed, is little better.

It seldom happens that any one living near a deceased person, whether relative, creditor or debtor, does not learn of his death. Such persons are in a position to protect any rights that they may have without a formal notice that administration upon the estate has been granted. Persons living at a distance would not be reached by a notice whether it were posted or published.

The recording of a deed in the proper office is notice to all the world that a conveyance has been made. The recording of a decree in the probate office, where a person would expect to look for such a record, ought to be an equally good notice that an executor or administrator has been appointed and who that person is.

The chief reason for abolishing the present requirement of notice is the desire to avoid the trouble which arises from a failure to give the required notice. The neglect of an administrator or executor to give notice of his appointment or to take the proper steps to perpetuate the evidence of having given that notice results in flaws in the title to property which may not be discovered until long after the time when it is possible to ascertain whether notice was properly given and the owners of the property, who are entirely free from fault, are caused great annoyance and expense. The evil following

such failure to give the notice exceeds any benefit derived from giving it. We recommend the following:

Draft Act

AN ACT TO ABOLISH THE REQUIREMENT THAT EXECUTORS AND ADMINISTRATORS SHALL GIVE NOTICE OF THEIR APPOINTMENT.

Section 1. Sections one, two, three and four of chapter one hundred and ninety-five of the General Laws are hereby repealed.

Section 2. Section eight of chapter one hundred and ninety-five of the General Laws is hereby amended by striking out in the twelfth and thirteenth lines the words "and also the notice of appointment of such executor or administrator."

Section 3. Section two of chapter one hundred and ninety-seven of the General Laws is hereby amended by striking out in the first and second lines the words "has given due notice of his appointment" and "thereafter" and inserting in the second line after the word "months" the words "after the approval of his bond" so as to read as follows:

Section 4. Section nine of chapter one hundred and ninety-seven of the General Laws as amended by chapter four hundred and seventeen of the acts of nineteen hundred and thirty-one is hereby amended by striking out in the fifth line the words "after having given due notice of his appointment."

Section 5. Chapter two hundred and two of the General Laws is hereby amended by striking out section twenty and inserting in place thereof the following:

Section 20. No interest in the real estate of a deceased person conveyed absolutely or in mortgage for value and in good faith by an instrument duly recorded shall be liable to be taken on execution, or sold under any judicial proceeding for payment of his debts, costs of court, or claims against his estate, except claims for taxes, municipal assessments or succession taxes, legacies or other charges created by will of the deceased, or the expenses or charges of administration, after the expiration of one year from the time of such executor or administrator giving bond for the performance of his trust, unless in pursuance of a license to sell granted in consequence of an order for the retention of assets passed under the provisions of section thirteen of chapter one hundred and ninety-seven upon a petition filed within said year or before said conveyance or mortgage is recorded, or unless in pursuance of a license to sell granted upon a petition filed in the registry of probate within said year, or unless for the satisfaction in whole or in part of a claim of which notice has been filed in the registry of probate within said year, stating substantially the name and address of the claimant, the nature and amount of the claim and the Court, if any, in which proceedings are pending to determine or enforce the same. Said notice shall be filed with the other proceedings in the case and entered upon the docket under the name of the estate of the deceased.

Section 6. Section twenty-six of chapter two hundred and four of the General Laws as amended by section four of chapter forty-four of the acts of nineteen hundred and twenty-one is hereby amended by striking out in the fourth line the words "notice of appointment or."

Section 7. Section five of chapter two hundred twenty-eight of the General Laws is hereby amended by striking out in the fourth and fifth lines the words "if he has given the notice of his appointment as required by law."

Section 8. The sections hereby repealed or amended shall continue in force, nevertheless, respecting all executors and administrators who shall be appointed

and whose bonds shall be approved before the day upon which this act shall take effect.

2. Public Administrators.

By the provisions of General Laws, Chapter 194, section 7, if, after the appointment of a public administrator and before the estate is finally settled, the husband, widow or an heir of the deceased claims the right of administration or requests the appointment of some other suitable person, the court must appoint such person, and the powers of the public administrator thereupon cease.

Such request is usually made by an attorney, a consul or some other person who has obtained a power of attorney for the purpose. The request is sometimes made when the administration is practically completed and nothing remains to be done but to distribute the estate.

In many cases no advantage to the persons interested is obtained by making a new appointment. Instead they are put to additional and unnecessary expense. It is therefore suggested that the statute be amended so as to make a new appointment discretionary rather than compulsory. A draft of an act for that purpose is subjoined.

Draft Act

AN ACT RELATIVE TO THE POWERS OF A PUBLIC ADMINISTRATOR WHEN A WILL IS PROVED, OR AN ADMINISTRATOR IS APPOINTED AT THE REQUEST OF THE HUSBAND, WIDOW OR AN HEIR OF THE DECEASED.

Section 1. Chapter one hundred and ninety-four of the General Laws is hereby amended by striking out section seven and inserting in place thereof the following:

Section 7. If, after the appointment of a public administrator and before the final settlement of the estate, the husband, widow or an heir of the deceased, in writing, claims the right of administration or requests the appointment of some other suitable person to the trust, the Probate Court may, if justice so requires, grant letters of administration accordingly, and if, after the appointment of a public administrator, a will of the deceased is proved and allowed, said court shall grant letters testamentary or letters of administration with the will annexed. When the person to whom such letters are granted gives the bond required by law the powers of the public administrator over the estate shall cease.

3. Debts and Rents of Deceased Persons.

When a special administrator is appointed under G. L. c. 193 §11 for an estate in which there is real property, the court may direct him to take charge of the real estate or any part thereof, collect the rents, make repairs and other payments needed to preserve the property, and so far as we know no difficulty has arisen.

At the suggestion of the members of the Administrative Com-

mittee of the Probate Courts, we recommend that the Probate Courts be authorized to give similar authority to executors and administrators "when the personal property appears to be insufficient" to pay the debts. It is often difficult to determine the value of the personal estate and some time may elapse before the court can ascertain whether the personal estate is sufficient or not. During this time, although the real estate of the deceased is under our laws liable for his debts as the real estate belongs to the heirs subject to such debts, they have a right to collect the rents and appropriate them to their own use until the land is sold by order of the Probate Court. We think the rents should be applied to the debts when the estate is insolvent and when there is uncertainty as to the sufficiency of personal estate; we think the Probate Court should be placed in a position to make it part of its function to protect the interest of the creditors in rents.

The order of court cannot affect an existing lien. The Probate Court has jurisdiction only over property left by a deceased person. It has no jurisdiction now over a mortgagee; the proposed bill would not give it such jurisdiction. The court, by its order, gives the administrator no rights which the deceased did not have at the time of his death. The only object of the bill is to put the executor or administrator in the shoes of the heirs or devisees for the purpose of using the rents to pay debts if the personal property of the deceased is not sufficient to pay his debts in full. That is a different case from that of a receiver who represents all persons who have any claim upon the property.

Section 4-A in the following draft act follows the language of G. L. c. 193 sec. 11.

The provision as to appeals exists now in regard to appeals in several other cases where an appeal does not suspend the order of the Probate Court.

We recommend the following:

Draft Act

Relative to Rents of Real Property of a Deceased Person When the Personal Property Appears to be Insufficient for Payment of Debts.

Section 1. Chapter two hundred and two of the General Laws is hereby amended by inserting after section four the following new section:

Section 4-A. If the personal property of a deceased person appears to be insufficient to pay his debts, the Probate Court may, after notice, authorize the executor or administrator to take charge of the real property of the deceased or any part thereof and collect the rents, make necessary repairs and do all other things

which it may consider needful for the preservation of such real property and as a charge thereon. The balance of said rents, subject to rights of dower or curtesy, shall be assets in the hands of the executor or administrator for the payment of debts in like manner as are the proceeds of real property sold for the payment of debts.

An order giving authority to the executor or administrator as aforesaid shall have effect, notwithstanding an appeal therefrom until it is otherwise ordered by a justice of the Supreme Judicial Court; provided however that, if any person interested in the estate shall give bond as provided in section thirteen of this chapter, no such authorization shall be given.

Suggested Rule as to Questions of Foreign Law

The Council repeats its recommendation of last year (Seventh Report, p. 8) that the various courts in the commonwealth adopt the following rule for the guidance of the bar under St. 1926, c. 168, which provides for judicial notice of foreign law.

PROPOSED RULE

Whenever the law of any jurisdiction outside of Massachusetts shall be material, it shall be the duty of counsel to call to the attention of the court such authorities or other material relating to the question as they wish the court to consider.

NOTICE ON PETITIONS TO VACATE JUDGMENTS

REPORT REQUESTED BY THE LEGISLATURE ON HOUSE NO. 622

By joint legislative order of April 5, 1932,* the Council was requested to report on two bills of which one was as follows:

HOUSE NO. 622

AN ACT TO REGULATE THE ISSUANCE OF NOTICE TO RESPONDENTS IN PETITIONS TO VACATE JUDGMENT.

Section sixteen of chapter two hundred and fifty of the General Laws is hereby amended by striking out, in the first line, the word 'may' and inserting in place

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*COPY

THE COMMONWEALTH OF MASSACHUSETTS

SENATE, April 4, 1932

Ordered, That the Judicial Council be requested to investigate the subject matter of current Senate document numbered two hundred and twenty-seven, forbidding an appeal from a court decree entered because of failure to comply with the law relative to the preparation and transmission of necessary papers to the full bench in appellate proceedings, and of current House document numbered six hundred and twenty-two, to regulate the issuance of notice to respondents in petitions to vacate judgment, and other matters pertinent to said subject as the council may deem advisable; and to include its conclusions and recommendations in relation thereto, with drafts of such legislation as may be necessary to give effect to the same, in its annual report for the current year.

Sent down for concurrence,

IRVING N. HAYDEN, *Clerk*

House of Representatives, April 5, 1932.

Adopted, in concurrence,

FRANK E. BRIDGMAN, *Clerk.*

thereof the word: — shall, — so as to read as follows: — *Section 16.* The court shall thereupon order notice thereof returnable at such time and to be served in such manner as it may direct, and may issue a stay or supersedeas of an execution issued on such judgment and an order for a return thereof with a certificate of the proceedings thereon. Upon the hearing of such petition, the court may vacate such judgment, and dispose of the case as if the judgment had not been entered.

We recommend the passage of this bill requiring an order of notice on a petition to vacate judgment.

The Supreme Judicial Court has decided that such a petition is addressed to the discretion of the court, and

"cannot rightly be granted unless it is made to appear that the party alleged to be aggrieved had a meritorious ground for rehearing on the merits", *Mellet* v. *Swan*, *269 Mass. 173; Lovell* v. *Lovell*, *276 Mass. 10.*

This involves a hearing, of which the other party is entitled to notice in order that he may be heard. The statute expressly provides for such notice but uses (probably by inadvertence) permissive rather than mandatory language. While we assume that the general practice is to issue the notice, we are informed that it is not the universal practice as it should be and that it has been held by a single justice of the Supreme Judicial Court that the notice was not mandatory. Obviously, if the petitioner can be denied an order of notice by a single judge, he can get no appeal, if the notice be refused in a district court, and can get no exception if refused in the Superior Court, however grievous the error of law which leads to the denial of an order of notice.

Therefore, we recommend the proposed act to make the notice mandatory in actions at law.

APPEALS FROM DECREES OR ORDERS DISMISSING APPEALS, EXCEPTIONS OR REPORTS

REPORT REQUESTED BY THE LEGISLATURE ON SENATE NO. 227

By the joint legislative order of April 5, 1932, the Judicial Council was requested to report on the following bill:

SENATE 227

Section one hundred and thirty-five of chapter two hundred and thirty-one of the General Laws, as most recently amended by section three hundred and one of chapter four hundred and twenty-six of the acts of nineteen hundred and thirty-one, is hereby further amended by adding at the end thereof the following: — There shall be no right of appeal from a decree entered for failure to comply with the foregoing provisions of this section.

Under the present practice, it appears to be considered the law that the only way of getting rid of an appeal is by a decree dismissing it in a court of equity or probate or other court. If an

appeal is taken from a decree dismissing an appeal, the second appeal must also be disposed of by another decree, and if another appeal is taken the process may go on indefinitely. The statute which *Senate 227* seeks to amend was intended to substitute definite requirements at definite times in connection with the preparation of the record in cases which were going to the Supreme Judicial Court. The law provides that if those requirements are not performed at the time specified the court in which the case is pending may dismiss the appeal or exceptions for failure to take necessary steps to complete the proceedings. When such a decree dismissing an appeal is entered, ordinarily it will dispose of a case unless the failure to enter was based on accident, mistake or some other reasonable cause of that kind. Occasionally, however, litigiously-minded parties persistently claim appeals from everything that a court does, and thus create a situation on the record which delays the administration of justice and ought not to exist. It is to prevent such a situation that *Senate 227* is designed.

In order to carry out the purpose of the bill, but at the same time to protect those situations of accident, mistake *or other adequate cause* in which there ought to be some opportunity of securing the late entry of an appeal by leave of the Supreme Judicial Court, we submit herewith a redraft of the bill.

Draft Act

Section 1. Section eleven of chapter two hundred eleven of the General Laws is hereby amended by striking out the said section and substituting therefor the following:

"*Section 11.* If, by mistake or accident or other sufficient cause any appeal from any court or a bill of exceptions or report which has been allowed by any court is not duly entered in the full court, that court, upon petition filed within one year after the appeal or bill of exceptions should have been entered, and upon terms, may allow the appellant to enter his appeal or the excepting party to enter his bill of exceptions or the proper party to enter the report. But no security by bond, attachment or otherwise which has been discharged by the omission to enter an appeal or bill of exceptions shall be revived or continued in force by the entry thereof."

Section 2. Section one hundred thirty-three of chapter two hundred thirty-one of the General Laws as heretofore amended is hereby further amended by inserting the words "in any court" after the word "if" in the first line thereof and by adding after the first sentence thereof the following sentence: —

"There shall be no right of appeal from such an order dismissing an appeal, over-ruling exceptions or discharging a report for the cause above stated, except by leave of the Supreme Judicial Court under section eleven of chapter two hundred eleven."

NOTE

The first sentence of section one hundred thirty-three of chapter two hundred thirty-one is somewhat involved, but it applies to "an appellant," "an excepting party," a party requesting a report made after decision, and a plaintiff where a report is made without decision. This seems to include all the possible parties and, accordingly, the end of that first sentence seems the proper place for the amendment, provided the first sentence is made clearly applicable as provided in the draft act above to appeals from decisions of the apellate divisions of the district courts, if it is not so applicable now.

LIS PENDENS

Report Requested by the Legislature on House Bill 1229.

By joint legislative order of March 14 and 16, 1932, a report was requested on House Bill 1229, "relative to the release of property from the operation of *Lis Pendens*." The order and the bill are printed in full in a footnote.*

The Council is opposed to this bill.

The Latin words "lis pendens" signify the pendency of a suit and a "memorandum" or notice of *lis pendens* is filed in the registry of deeds under the provisions of G. L. c. 184, s. 15 when a suit is brought affecting the title to land.

Common illustrations of such suits are writs of entry, and bills to compel specific performance of an agreement to sell land, in which the plaintiff claims legal or equitable ownership and seeks to establish his title. The notice, which is filed in the registry of deeds that such a suit is pending, is not an "encumbrance" on the land like an attachment which may be dissolved under the statutory procedure, without affecting the merits of the controversy in any way. An attachment is merely security for the payment of a

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* The joint legislative order of March 14 and 16, 1932, was as follows:

Ordered, That the Judicial Council be requested to investigate the subject matter of current House document numbered twelve hundred and twenty-nine, relative to the release of property from the operation of lis pendens, and to include its conclusions and recommendations in relation thereto, with drafts of such legislation as may be necessary to give effect to the same, in its annual report for the current year.

HOUSE No. 1229

An Act relative to the Release of Property from the Operation of Lis Pendens.

Section fifteen of chapter one hundred and eighty-four of the General Laws is hereby amended by adding at the end thereof the following new paragraph: —

During the pendency of any proceeding to which this section applies, the court, with the consent of the parties or their attorneys, or upon motion and after hearing, may make an interlocutory decree releasing the whole or any part of the real property liable to be affected thereby, from the incumbrance arising from the bringing of such proceeding. Upon demand, the clerk of the court shall give a certificate of the fact of such release and such certificate may be recorded in the registry in which the original record mentioned in this section was made.

claim on which suit is brought, whereas such suits tie up the land, not as security for payment of some claim, but because they present controversies as to who really owns the land. To attempt to authorize such a release as is proposed in House 1229 would be equivalent to saying that the plaintiff is to be deprived by the courts on summary hearing of the specific thing, the right to which he seeks to establish by a suit. If the plaintiff is entitled to certain land as the legal or equitable owner, the legislature should not authorize the court to deprive the plaintiff of the thing he claims to be entitled to. Accordingly, we oppose House Bill No. 1229.

There are, however, certain proceedings in which several parcels of land may be involved as to which a memorandum or notice of a pending suit may have been recorded and as to which it may be desirable to make the law clearer as to the method of limiting the extent of the recorded notice when the court has limited the scope of the pending suit by an order or decree dismissing the suit so far as it relates to some specified separable part of the land. Illustrations of these suits are suits in equity "to reach and apply," otherwise commonly known as "equitable attachments." Other examples are writs of entry, petitions for registration or petitions to foreclose tax titles, which are common in the Land Court and which often cover more than one lot of land. In order to avoid any doubt as to the practice in such cases we suggest the following amendments to G. L. Chap. 184, sections 16 and 17.

Draft Act

Relative to the Recording of Notice of Pending Suits Relating to Land.

Section 1. Section sixteen of chapter one hundred and eighty-four of the General Laws is hereby amended by inserting after the word "judgment" in the first line thereof the words "including an interlocutory order" and by inserting after the word "decree" in the first line thereof the words "including an interlocutory decree," and by inserting after the word "defendant" in the second line thereof the words "dismissing the action or suit or other proceeding as to the whole or any specified portion of the land described in a memorandum recorded under the preceding section," and by inserting after the word "section" in the fourth line thereof the words "as to the whole or any specified portion of the land affected thereby," and by striking out the word "other" in the sixth line thereof, so that the same shall read:

Section 16. At any time after final judgment or an interlocutory order to which no exceptions are pending or a decree or interlocutory decree from which no appeal is pending in favor of the defendant dismissing the action or suit or other proceeding as to the whole or any specified portion of the land described in a memorandum recorded under the preceding section, or after the discontinuance, dismissal or other final disposition, by consent of parties or otherwise, of a proceeding mentioned

in the preceding section as to the whole or any specified portion of the land affected thereby, or in case of the non-entry of the writ, petition or bill of complaint, the clerk of the court wherein such judgment, decree, discontinuance, dismissal or final disposition is recorded, or out of which such writ issued or to which such petition or bill of complaint was addressed, shall upon demand give a certificate of the fact of such judgment, decree, discontinuance, dismissal, final disposal or non-entry, and such certificate may be recorded in the registry in which the original record mentioned in said section was made.

Section 2. Section seventeen of said chapter one hundred and eighty-four is hereby amended by inserting after the word "unless" in the fifth line thereof the words "a memorandum has been recorded as provided in section fifteen or"

Recommendations Adopted by the Legislature Since the Seventh Report

Recommendations of the Judicial Council were in substance adopted by the legislature in 1932 as follows:

Chapter 118. Relative to inquests.

Chapter 130. Relative to the effect of settlements by agreement of motor vehicle cases on cross actions.

Chapter 157. Extending the act authorizing district court justices to sit in the Superior Court in misdemeanor cases at the request of the chief justice.

Chapter 175. Relative to the payment of small amounts of wages of deceased employees without administration.

Chapter 177. Relative to answers to notices to admit facts.

SUMMARY OF THE WORK ACCOMPLISHED BY THE VARIOUS COURTS

The act creating the Judicial Council (reprinted at the beginning of this report) provides that the Council shall study "the work accomplished and the results produced by the judicial system and its various parts" and "shall report annually upon the work of the various branches."

There have been entered in the Supreme Judicial Court, Superior Court, Land Court, Probate Court, the Municipal Court for the City of Boston, the Boston Juvenile Court, the other District Courts and in Trial Justices' Courts during their last statistical year as reported 234,272 civil cases and 232,286 criminal cases including inquests and juvenile delinquency cases. The annual periods reported by the different courts are not the same, some reporting for the last calendar year while others from June 30 to June 30, or from September 1 to September 1, etc. The details are as follows:

		Civil Entries.	Criminal Entries.
SUPREME JUDICIAL COURT.			
Entries not including Appellate cases[1]		2,411	–
Full Bench Rescripts		427	–
Advisory Opinions		3	–
Superior Court:			
Law	34,464		
Equity	3,411		
Divorce and Nullity	81		
		37,956	
Indictments	6,519		
Appealed Cases	10,421		
Actions on Bail Bonds and Recognizances	206		
		.....	17,146
Land Court		1,678	–
Probate Courts, Probate Entries		24,453	–
Divorce		4,921	–
Municipal Court of Boston:			
Small Claims	1,421		
Other Actions	39,948		
Supplementary Process	4,180		
		45,549	
Appellate Division		120	
Criminal Complaints		.....	39,823
Inquests		.....	98
Boston Juvenile Court		.....	994
District Courts:			
Small Claims	23,304		
Other Actions	75,619		
Supplementary Process	14,202		
Insane cases	3,545		
		116,670	
Appellate Division		284	
Criminal Complaints		.....	163,031
Inquests		.....	840
Juvenile cases		.....	8,544
Trial Justices		.....	1,810
Total		234,272	232,286
Grand total		466,558	

[1] Prerogative writs, etc. 156
Equity 180
Petitions for admission to the bar 1,335
Attorney-General informations, etc. 740
Total 2,411

SUMMARIES OF TOTALS FOR THE YEARS 1927–1932.

	Civil Cases.	Criminal Cases.	Total.
1927	174,878	240,184	415,062
1928	194,382	245,765	440,147
1929	224,101	247,969	472,070
1930	233,288	238,735	472,023
1931	234,809	235,170	469,979
1932	234,272	232,286	466,558

For details as to counties see below and Appendix A.

There is a duplication of cases to the extent of 10 entered in the Supreme Judicial Court and transferred to the Superior Court for

trial and of 4,802 cases removed from the District Courts and Boston Municipal Court to the Superior Court, but the reporting periods of the Courts differ so that no more accurate tabulation is available.

On the other hand, attention is again called to the fact that a "single land registration petition often covers in fact several different cases, while in the Probate Courts in each estate probated, for instance, there may be various petitions, each raising a separate issue and each requiring a hearing." (Third Report, p. 8.)

Besides the foregoing 466,558 cases there were 50,006 tabulatable injuries brought before the Department of Industrial Accidents for adjustment, this number being 11,735 less than in 1930. A number of petitions, some, at least, of a judicial nature, were brought before county commissioners. There were 1,114 cases entered before the newly created State Board of Tax Appeals.

SUPREME JUDICIAL COURT

Full Bench Cases

During the year ending August 31, 1932, the Full Bench decided 427 cases, including 9 cases in which there were rescripts but no opinions. There were also 3 advisory opinions of the justices rendered at the request of the Legislature, making a total of 430. (See Table of cases since 1873, Appendix A, p. 77.)

During the court year from September 1, 1931 to August 31, 1932, the judicial force of the court of seven judges was reduced during some months by the illness and death of Mr. Justice Carroll, and the subsequent illness and death of Mr. Justice Sanderson.

Single Justice Cases

The business brought before the single justices is shown by the following table. Of the number of cases there shown, the litigated business ordinarily consists of the equity cases, the applications for prerogative writs and occasional disbarment cases. Of these cases few are actually tried, with witnesses, by the court. Equity hearings are usually on motions, demurrers or masters' reports. The cases tried with witnesses are the prerogative writs and disbarment cases. The remaining and greater number of cases in the table are of a formal nature and require little of the court's time and attention.

SUPREME JUDICIAL COURT ENTRIES FOR ALL COUNTIES

FOR THE YEAR BEGINNING SEPTEMBER 1, 1931, THROUGH AUGUST 31, 1932,
(Not including Full Bench Cases)

COUNTY.	Equity.	Transferred to Superior Court.	Referred to Masters.	Prerogative Writs.	Petitions for Admission to Bar.	Other Proceedings.
Barnstable	–	–	– Auditors	–	2	–
Berkshire	–	–	2	4	1	–
Bristol	7	–	–	6	10	–
Dukes	1	–	–	–	–	–
Essex	17	–	6	30	–	7
Franklin	–	–	–	–	–	–
Hampden	1	–	–	10	–	–
Hampshire	–	–	–	1	1	1
Middlesex	39	1	5	21	3	3
Nantucket	–	–	–	–	–	–
Norfolk	1	–	–	10	–	4
Plymouth	2	–	–	3	–	2
Suffolk	107	9	11	65	1,318	722
Worcester	5	–	–	6	–	1
Totals	180	10	24	156	1,335	740

DETAILED ENTRIES IN THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY REFERRED TO IN THE TABLE ABOVE

SEPTEMBER 1, 1931, TO SEPTEMBER 1, 1932

Law Docket.	
Petitions for admission to the bar	1,318
Petitions for writs of Mandamus	35
Petitions for writs of Habeas Corpus	9
Petitions for writs of Certiorari	9
Petitions for writs of Error	5
Petitions for writs of Prohibition	4
Informations in the nature of Quo Warranto	3
Appeals under Chap. 218, Acts of 1931	12
Application under G. L. Chap. 279, Sec. 4	1
In re "Fraudulent practices"	1
Total entries on Law Docket	1,397
Equity Docket.	
Suits in equity	107
Informations by the Attorney General (for failure to file corporation returns, etc.)	722
Total entries on Equity Docket	829
Total entries on both Dockets	2,226

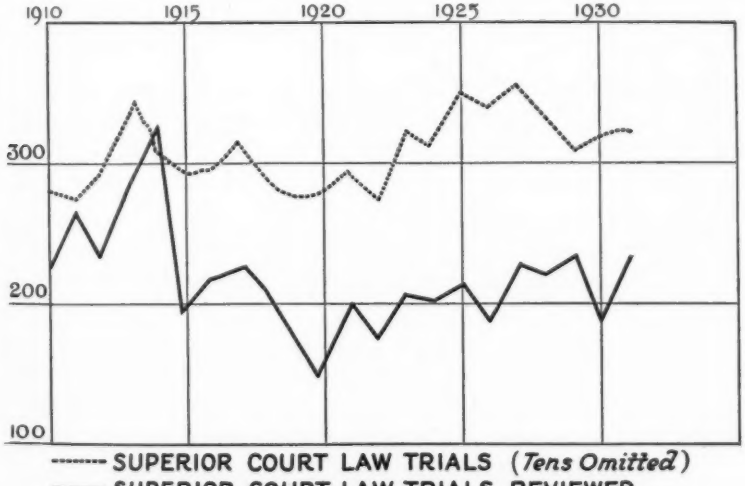
SOURCES OF THE APPELLATE WORK OF THE FULL BENCH OF THE SUPREME JUDICIAL COURT 1890-1931

The "continuous study of the courts" for which the council was created involves the consideration of facts shown by the available statistical information, as to the actual workings of the courts, particularly on the civil side, which is the larger field. On the criminal side, the data which have for many years been gathered and published by the correction department, and more recently by the probation commission, can be used for the study of long-time trends, of actual conditions, of the need of change, of the fitness of proposed changes. That they are not perfect may be conceded. They must be used with an understanding of the chance of error. But they are infinitely better than nothing. The cry of "correct statistics or none at all" is a counsel of folly, comparable only with the action

of a merchant who should discontinue his accounting department because bookkeepers sometimes made mistakes. On the civil side of legal administration, fairly full information can be had as to the *amount* of grist that comes to the legal mill. Exact information as to the manner of its grinding is scant and limited to special studies covering partial aspects and brief periods. The void which results from a want of real knowledge as to some aspects of the system is filled by bar myths and traditions, often found wrong when the facts come out, and by general impression, largely tinged by individual grievance.

We present a study, necessarily fragmentary, subject to disproof or correction, which we think will serve to dispel some wrong impressions. The study relates to the extent of legal review by the Supreme Judicial Court in cases tried in the Superior Court. A preliminary observation is that while courts of review may not be theoretically desirable, they are necessary compensations in a fallible human institution. To the extent that any court or system of courts lessens the need of review, to that extent it indicates more effective operation.

An examination of the figures in the table opposite page 64 which is charted below discloses that although in the last quarter century much of former civil trial work of the Superior Court has been transferred to non-jury fields, the portion remaining has constantly increased, and that at the same time the ratio of *reviews* by the Supreme Judicial Court to trials has constantly declined.



This is no new system settling into its stride. There is nothing new about jury trial work in Massachusetts. It is noteworthy that a similar decline over the last twenty years appears in the municipal court of the city of Boston. Some factor common to both courts appears to be at work producing these changes of ratio. Opinion will probably differ as to the real cause. Has there been improvement in the work of the two largest trial courts? Has the futility of appeals for insubstantial error become increasingly apparent to the bar? The figures appear to be encouraging.

An examination of the *results* of the review by the Supreme Judicial Court of rulings by the Superior Court for the five-year period 1927–1931 inclusive, applying the severe test that any modification of the action of the Superior Court shall be considered a reversal, shows that the Superior Court was sustained in its rulings to the extent following: —

In workmen's compensation cases . .	$\frac{69.44}{100}$ %;
in civil jury cases	$\frac{72.20}{100}$ %;
in civil cases without jury, including interlocutory rulings	$\frac{77.81}{100}$ %;
in criminal cases	$\frac{93.33}{100}$ %.
Combining all cases, the percentage of affirmances was	$\frac{75.32}{100}$ %.

For the purpose of these figures, each case as reported was considered the unit, no matter how many different actions or rulings were involved.

SUPERIOR COURT

Tabulated returns of the clerks of Superior Court for the year, June 30, 1931, to June 30, 1932, in each county, appear in Appendix A.

We have already shown the situation in this court.

The table on page 80 shows the gradual decrease almost to the vanishing point of the divorce business in the Superior Court since the Probate Courts were given concurrent jurisdiction.

SOURCE OF CASES BROUGHT BEFORE THE FULL BENCH OF THE SUPREME JUDICIAL COURT BY SOME FORM OF APPELLATE PROCEEDING FROM 1890 TO 1931 [6]

Year	S. J. C. Single Justice	Probate Court [4]	Land Court	Appellate Division				Superior Court												
											Law									
											Jury [1]			Non-Jury [2]					
				Boston Municipal	Northern	Southern	Western	Tax Appeals and Abatement	Equity	Industrial Accident	Tort	Contract [3]	Land Damage	Tort	Contract [3]	Others Civil Cases [5]	Criminal Cases	"Law" Totals (Civil) Superior Court Reviewed	Total Superior Court "Law" Trials (Civil)
1890	61	–	–	–	–	–	–	1	20	–	62	32	9	12	50	40	39	205	–
1900	52	1	1	–	–	–	–	4	31	–	94	53	14	9	38	34	17	242	–
1910	49	–	14	–	–	–	–	–	44	–	117	44	1	8	33	18	16	221	2779
1911	59	1	7	–	–	–	–	4	54	–	141	52	3	13	38	17	18	264	2775
1912	58	2	7	–	–	–	–	4	45	–	121	45	4	9	37	15	16	231	2901
1913	48	5	10	4	–	–	–	8	58	5	132	61	6	21	39	26	14	285	3457
1914	62	11	10	14	–	–	–	6	56	32	178	65	5	15	50	14	19	327	3095
1915	54	11	5	6	–	–	–	1	45	11	93	47	8	8	30	8	14	194	2957
1916	59	7	9	13	–	–	–	2	62	26	104	42	4	9	36	24	13	219	2973
1917	63	10	9	15	–	–	–	4	70	28	90	63	1	8	41	23	8	226	3157
1918	37	7	4	21	–	–	–	5	44	31	107	44	3	7	30	14	9	205	2796
1919	47	3	7	18	–	–	–	5	47	26	80	49	4	8	27	10	9	178	2771
1920	39	9	10	20	–	–	–	6	38	15	69	36	3	4	22	17	12	151	2810
1921	59	23	9	14	–	–	–	[illegible]											

1911	55	1	7	–	–	–	–	4	54	–	141	52	3	13	38	17	18	264	2775
1912	58	2	7	–	–	–	–	4	45	–	121	45	4	9	37	15	16	231	2901
1913	48	5	10	4	–	–	–	8	58	5	132	61	6	21	39	26	14	285	3457
1914	62	11	10	14	–	–	–	6	56	32	178	65	5	15	50	14	19	327	3095
1915	54	11	5	6	–	–	–	1	45	11	93	47	8	8	30	8	14	194	2957
1916	59	7	9	13	–	–	–	2	62	26	104	42	4	9	36	24	13	219	2973
1917	63	10	9	15	–	–	–	4	70	28	90	63	1	8	41	23	8	226	3157
1918	37	7	4	21	–	–	–	5	44	31	107	44	3	7	30	14	9	205	2796
1919	47	3	7	18	–	–	–	5	47	26	80	49	4	8	27	10	9	178	2771
1920	39	9	10	20	–	–	–	6	38	15	69	36	3	4	22	17	12	151	2810
1921	50	22	8	17	–	–	–	7	60	19	73	52	2	15	40	18	8	200	2917
1922	53	31	4	10	–	–	–	4	56	27	66	58	1	10	28	15	9	178	2764
1923	53	25	7	16	0	0	1	7	70	14	75	65	2	11	36	14	25	203	3243
1924	37	25	3	20	2	0	1	5	60	14	73	73	4	7	34	11	24	202	3157
1925	63	29	5	15	1	1	1	2	65	21	80	65	3	7	48	10	39	213	3536
1926	40	38	12	19	2	2	6	5	86	17	80	52	1	13	38	7	59	191	3403
1927	33	35	10	11	5	2	7	7	97	16	115	70	3	5	31	6	38	230	3553
1928	44	43	5	15	3	2	3	3	84	13	99	76	3	10	30	4	34	222	3341
1929	27	51	8	14	14	3	2	8	102	26	106	61	5	10	40	10	13	232	3007
1930	38	37	9	11	12	3	10	7	104	21	95	36	5	13	30	10	18	180	3201

1928	44	43	5	15	3	2	3	3	84	13	99	76	3	10	30	4	34	222	3341
1929	27	51	8	14	14	3	2	8	102	26	106	61	5	10	40	10	13	232	3007
1930	38	37	9	11	12	3	10	7	104	21	95	36	5	13	30	10	18	189	3301
1931	31	44	8	17	10	5	5	4	87	31	107	66	3	11	30	15	11	232	3341

[1] Includes directed verdicts.
[2] Includes interlocutory orders.
[3] Includes "contract or tort."
[4] Before Stat. 1919, c. 274, includes probate appeals reserved for full bench by a single justice, without decision.
[5] Replevin, summary process, grade-crossing petitions, probate issues, disbarment, writs of entry, writs of review, petitions to vacate judgment, etc.
[6] Petitions to prove exceptions omitted.

Some range of choice in classification is possible, but as the methods used have been consistent throughout, long-term trends are not affected. The count is by opinions, not by cases.

LAND COURT

STATISTICS FOR THE YEAR 1931

Registration Cases	462
Post Registration Cases	508
Tax Lien Cases	580
Miscellaneous Cases	128
Total Cases Entered	1,678
Decree Plans Made	525
Subdivision Plans Made	431
Total Plans Made	956
Total Appropriation	$108,484.00
Fees Sent State Treasurer	52,199.45
Income from Assurance Fund Applicable to Expenses (G. L., Chap. 185, Sec. 106)	9,068.62
Unexpended Balance	8,804.10
Net Cost to Commonwealth	38,411.83
Assurance Fund, November 30, 1931	228,567.61
Assessed Value of Land Registered	5,339,548.00

The statistics for this court in the 7th Report, p. 44, were stated to be for 1929 by error. They were for 1930.

PROBATE COURTS

The entries in these courts for 1931 were as follows:

Counties.	Probate Entries.	Divorce Entries.
Barnstable	401	55
Berkshire	756	127
Bristol	1,604	330
Dukes	95	8
Essex	2,933	562
Franklin	376	40
Hampden	1,620	365
Hampshire	461	53
Middlesex	5,407	1,092
Nantucket	61	5
Norfolk	1,912	341
Plymouth	1,173	124
Suffolk	4,796	1,352
Worcester	2,858 new	467 new
Total	24,453	4,921

As we pointed out in previous reports the number of entries thus stated in no way represents the amounts of business done by these courts, because in each will, estate and trust there are apt to arise questions of construction, accounting, etc., that involve hearings, decisions and decrees so that they are in effect independent cases although never listed as such. In other words, a will offered for probate, for example, counts merely as one case although many different issues, arising under it, have to be heard and determined.

We have received the following more detailed reports:

SUFFOLK COUNTY, 1931

New Entries — Probate	4,796
Divorce	1,352
Commitments of Insane	1,071
Total	7,219

Number of decrees entered and recorded	6,635
Many decrees entered by Court are not recorded and are not included in above figure.	
Total number of papers recorded	33,129
Original libels for divorce tried and disposed of	1,074
Subsidiary proceedings in divorce tried and disposed of	501
Probate cases tried and disposed of	806
Total	2,381
Temporary custody and temporary alimony decrees are not included in above figures.	
Included in the 1,074 libels for divorce tried and disposed of are 110 libels which were fully heard and dismissed.	
Number of people in attendance at opening of Court during 1931	37,098
Number of people in attendance at opening of Court from January 1 to November 19, 1932	43,215
There were no cases heard by Court in 1931 undisposed of except one pending in Supreme Judicial Court on appeal.	
Entry Fees — Probate	$14,388
Divorce	6,760
Fees (Certificates and Copies)	12,300.62
Total	$33,448.62

MIDDLESEX COUNTY, 1931

(Compare table of business from 1917 to 1928, 4th Report of Judicial Council, p. 108)

Probate		Divorce	
New Cases	5,407	New Cases	1,092
Papers filed	44,733	Papers filed	3,308
Accounts filed	4,710	Decrees nisi	757
Decrees	13,145	all others	784
Certificates	11,526	Certificates	1,133
Pages — attested copy	26,309	Orders of notice	1,184
Citations	5,226	Petition — modification	95
Letters	5,196	Petition — contempt	125
Licenses	553		
Fees collected	$32,845.30		

Trial Record			
Cases assigned	2,482	Decrees entered between 4th Tuesday, July, and 2nd Monday, September	809
Cases tried and disposed of	1,577		
Designations of special and out-of-county judges	283		
Days during which Court sat for trials	403		

HAMPDEN COUNTY

Miscellaneous hearings for 1931	220
Divorce hearings for 1931	320
Sittings of the Court for routine matter — 1931	118
Petitioners heard on ex parte matters — 1931	1,736
(Each lawyer or petitioner presents from one to many papers.)	
Papers filed — 1931	14,144

PLYMOUTH COUNTY

DECREES

Equity	15
Trusteeships	58
De bonis non	8
De bonis non with will annexed	10
Accounts allowed	847
Sales of Real Estate	157
Mortgages	21

MUNICIPAL COURT OF THE CITY OF BOSTON

Including small claims and supplementary process cases there were 45,549 civil cases entered in this court during the calendar year 1931, and 39,823 criminal cases during the year ending September 30, 1932.

The following table shows the details of civil actions in this court from 1913 to the year 1931, inclusive.

MUNICIPAL COURT OF THE CITY OF BOSTON

CIVIL ACTIONS (OTHER THAN SMALL CLAIMS CASES)

YEAR.	Entered.	Removed.	Per Cent.	All Defaults.	Per Cent of Entries.	Tried.	Per Cent of Entries.	Total Plaintiffs' Judgments.	Average Plaintiffs' Judgment Contract only.	Heard, Appellate Division.	Per Cent of Trials.	To Supreme Judicial Court.
1913 .	14,005	441	3.1	7,067	50	1,735	12	$1,008,147	$115.10	74	4.2	11
1914 .	15,173	501	3.3	7,681	50	1,676	11	976,320	103.45	88	5.2	18
1915 .	16,077	401	2.4	7,848	49	1,587	10	–	–	–	–	9
1916 .	16,095	401	2.4	7,707	47	1,760	11	1,117,059	104.69	93	5.8	19
1917 .	15,552	424	2.7	7,189	46	1,745	11	1,203,926	126.58	88	5.0	10
1918 .	12,786	380	2.9	6,381	49	1,290	10	1,043,886	120.32	84	6.5	6
1919 .	12,204	408	3.3	5,511	45	1,554	12	925,275	157.46	76	4.8	24
1920 .	13,702	477	3.4	6,078	44	1,745	12	1,065,379	132.07	94	5.4	18
1921 .	18,640	677	3.6	7,302	39	2,203	11	1,563,293	146.82	93	4.2	15
1922 .	19,948	476	2.386	10,106	50	2,201	11	1,877,970	154.10	106	4.8	10
1923 .	21,805	746	3.4	10,589	48	2,397	11	2,019,262	158.49	77	3.2	20
1924 .	23,820	907	3.8	11,239	47	2,636	11	2,256,391	149.86	79	3.0	14
1925 .	26,482	1,263	4.8	13,149	49	2,661	10	2,529,877	156.28	103	3.8	18
1926 .	30,830	1,505	4¾	15,184	49	2,928	9	2,980,009	163.74	92	3.1	22
1927 .	36,025	1,303	3.6	18,129	50	3,342	9.2	3,579,613.41	152.05	104	3.1	21
1928 .	37,441	1,039	2.7	19,181	51	3,740	9.9	3,146,170.07	148.13	141	3.7	14
1929 .	39,676	992	2.5	20,114	50	3,863	9.7	4,154,206.96	154.00	112	2.9	14
1930 .	39,557	1,251	3.2	17,235	43	4,131	10	5,035,129.23	181.61	118	2.8	9
1931 .	39,948	1,235	3.1	12,356	31	4,290	11	5,141,389.85	210.40	107	2.5	14

The jurisdictional limits in civil cases from 1866 to 1877 were $300; from 1877 to 1894, $1,000; from 1894 to 1922 $2,000; from 1922 to September 1, 1929, $5,000; since September 1, 1929, the jurisdiction has been unlimited in amount.

The number of cases brought in this court in which the *ad damnum* (amount claimed in the writ) exceeds $5,000 under an act in effect Sept. 1, 1929, and the number removed, are as follows:

Cases of Over $5,000

	CONTRACT.		TORT.		CONTRACT OR TORT.	
	Entered.	Removed.	Entered.	Removed.	Entered.	Removed.
1929 (last 4 months) . .	44	15	23	1	2	–
1930	257	110	230	64	7	4
1931	331	101	405	130	18	3
1932 (first 8 months) . .	225	84	261	77	7	2

This table shows a constantly increasing use of the recently enlarged jurisdiction under St. 1929, c. 316, which took effect Sept. 1, 1929.

The status of supplementary process entries in comparison with preceding Poor Debtor and Equitable Process cases is shown in the following table.

POOR DEBTOR, EQUITABLE (OR DUBUQUE) PROCESS AND (SINCE MARCH 1, 1928), SUPPLEMENTARY PROCESS ENTRIES

Year.	Poor Debtor Entries.	Equitable Process.	Supplementary Process.
1925	3,720	64	none
1926	4,353	73	none
1927	4,615	92	none
1928	724*	10*	7,273**
1929	none	none	8,082
1930	none	none	6,550
1931	none	none	4,180
1932 (first eight months)	none	none	1,532

* Period from January 1 to March 1.
** Period from March 1 to December 31.

The criminal business of this court is shown in the following tables, the motor vehicles cases being also tabulated.

Criminal Statistics, Municipal Court of the City of Boston, for the Year ending September 30, 1932

Pending.	Begun.	Discharged Nol-prossed Dismissed Placed on File before Trial.	Pleas.		Findings.		Bound Over.	Sentences Appealed to Superior Court.
			Guilty	Not Guilty.	Guilty.	Not Guilty.		
397	39,823	844	16,696	5,701	20,240	2,167	693	2,104

Motor Vehicle Offences, Municipal Court of Boston, for Year ending September 30, 1932

Summons Issued		Appealed
Violation automobile law	2,701	293
Violation traffic rules	8,875	165

The violations of the automobile law increased by 444 from last year, and the appeals increased by 87. The violations of traffic rules decreased by 3,700 cases over last year, and the appeals decreased by 103.

Inquests

There were 98 inquests held in this court during the year.

BOSTON JUVENILE COURT

The Boston Juvenile Court, created in 1906, is a separate court with jurisdiction in juvenile cases in the central district of Boston.

During the year ending September 30, 1932, there were 958 new complaints entered and 36 "neglect" cases, as compared with 735 new complaints and 21 "neglect" cases in the previous year, 826 new complaints and 33 "neglect" cases in the year ending September 30, 1930, and 791 new complaints and 24 "neglect" cases in the year ending September 30, 1929. In connection with these figures, it should be remembered that in many of the cases the boy is placed on probation or otherwise kept under supervision by the court through the probation officer and that in addition to the "cases" of new complaints entered on the docket and reported in the annual returns to the Department of Correction, the advice and assistance of the judge is constantly sought by parents in informal conferences in cases which do not reach the stage of a formal complaint by anyone.

DISTRICT COURTS

There are 72 of these courts (with 72 standing justices and 140 or more special justices) and their statistical report for the year ending October 1, 1932, appears facing this page.

The following table shows the facts since 1925 for the purpose of

	1925 to 1926.	1926 to 1927.	1927 to 1928.	1928 to 1929.	1929 to 1930.	1930 to 1931.	1931 to 1932.
Civil writs entered	43,294	47,413	55,491	62,203	65,571	67,846	75,619
Appeals, Civil	33	34	21	26	30	–	–
Removals to Superior Court	1,853	1,775	1,971	1,782	2,376	3,168	3,567
Reported to Appellate Div.	82	96	153	183	224	214	284
Appealed to Sup. Jud. Court	13	15	13	26	60	25	20
Supplementary Process	8,650*	11,739*	12,235**	14,557	13,536	14,244	14,202
Small Claims	18,179	19,332	19,978	25,422	25,729	25,571	23,304
Insane	3,799	2,946	3,236	3,384	3,620	3,774	3,545
Criminal Cases Begun	161,809	165,015	168,636	174,370	178,798	172,027	163,031
Criminal Appeals	9,595	9,184	9,590	8,629	8,213	7,736	7,927
Drunkenness	60,132	61,475	60,465	59,838	56,247	58,246	52,588
Operating under influence of Liquor	3,413	3,552	3,639	4,570	4,892	5,079	4,506
Total Automobile Cases	45,888	40,284	43,732	48,021	50,552	48,000	46,657
Intoxicating Liquor Cases	10,317	10,653	9,544	10,094	8,492	5,690	5,189
Inquests	780	888	833	980	988	944	840
Juvenile Cases under 17 Yrs.	8,084	7,835	8,522	9,210	9,273	8,816	8,544

* Poor Debtor and Dubuque.
** Poor Debtor and Dubuque and Supplementary Process.

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STATISTICS OF THE DISTRICT COURTS OF MASSACHUSETTS FROM OCTOBER 1, 1931 TO OCTOBER 1, 1932
AS REPORTED BY THE CLERKS OF SAID COURTS.

Compiled by the Administrative Committee of District Courts

DISTRICT COURTS	Civil Writs Entered	Removals to S. C.	Reported to App. Div.	Appealed to S. J. C.	Supplementary Process	Small Claims	Insane	Criminal Cases Begun	Criminal Appeals	Drunkenness	Automobile Cases—Total	Operating under inf. of int. liquor	Int. Liquor Cases	Inquests	Juvenile Cases under 17 years
1. Worcester, Central	6420	95	26	3	548	946	476	7086	208	3564	1517	205	98	48	521
2. Springfield	3176	114	9	0	529	1140	182	9168	83	2005	2049	183	416	53	438
3. Middlesex, First Eastern	6176	166	21	1	1089	2316	57	7221	202	2231	3194	239	66	17	336
4. Roxbury	1723	45	1	0	800	829	2	12,932	926	3541	3403	136	386	13	709
5. Bristol, Third	1765	63	16	4	147	505	105	3404	480	959	535	82	174	21	180
6. Middlesex, Third Eastern	5796	154	41	2	945	988	177	8418	345	3118	1509	217	531	36	381
7. Dorchester	1654	54	3	0	1345	864	0	6205	343	1512	1817	94	94	20	330
8. Lowell	2164	87	11	1	209	363	141	3584	67	1909	544	47	170	42	124
9. Bristol, Second	1802	164	1	0	145	543	105	3601	187	1533	584	60	111	21	305
10. Essex, Southern	3810	223	8	1	353	578	93	3816	272	1567	748	131	273	16	232
11. Lawrence	1817	68	11	3	146	116	42	3493	187	1617	430	92	38	7	254
12. Norfolk, East	3688	120	3	2	591	1620	61	5553	171	1514	2278	302	137	50	276
13. Somerville	2594	113	4	0	464	551	89	1978	299	959	166	78	77	13	149
14. West Roxbury	665	32	1	0	500	479	0	3400	406	1021	928	79	118	13	165
15. Essex, First	2067	235	3	0	238	417	404	4324	305	832	2293	141	194	19	90
16. Brockton	1531	73	7	0	398	415	140	3070	164	1038	688	91	88	37	676
17. East Boston	734	46	2	0	368	399	0	6546	220	3033	1009	32	435	0	211
18. Chelsea	2427	569	8	0	577	595	14	4288	392	1885	1079	104	115	19	311
19. South Boston	371	37	1	0	92	130	0	6683	209	3597	1171	43	280	10	29
20. Essex, North Central	1298	59	3	0	60	108	13	985	101	558	134	47	33	10	64
21. Holyoke	616	46	3	0	46	373	40	1274	26	572	147	40	38	9	115
22. Hampshire	569	27	0	0	80	469	88	1636	112	518	385	85	74	14	204
23. Middlesex, Second Eastern	2417	107	10	0	456	511	177	2269	84	781	461	102	43	33	102
24. Berkshire, Central	908	28	0	0	73	303	34	1784	42	503	626	61	86	12	50
25. Bristol, First	842	53	1	0	95	192	148	1785	105	452	807	73	42	20	127
26. Middlesex, Fourth Eastern	1470	50	5	0	298	534	7	2621	63	676	994	139	52	11	123
27. Newton	1947	74	24	0	539	628	50	2213	173	526	626	77	15	24	64
28. Fitchburg	452	18	0	0	49	164	17	1188	35	533	179	37	5	4	77
29. Norfolk, Northern	1273	40	11	0	420	438	99	1658	109	521	576	99	14	26	123
30. Brighton	554	9	0	0	485	395	0	2623	215	903	763	60	80	20	45
31. Franklin, Greenfield	394	13	1	0	24	230	31	895	21	165	239	45	35	18	53
32. Worcester, First Southern	294	7	3	0	22	53	16	2129	28	288	1318	45	19	8	118
33. Brookline	1872	77	6	0	555	492	27	1927	82	325	765	19	10	8	84
34. Bristol, Fourth	390	29	2	0	39	288	46	1249	41	195	556	39	40	9	20
35. Plymouth, Second	657	18	0	0	158	292	18	1489	138	439	548	136	29	3	70
36. Chicopee	353	7	1	0	43	116	33	661	11	256	79	22	24	5	69

31.	Franklin, Greenfield	394	15	1	0	24	[illegible]	31	[illegible]	21	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
32.	Worcester, First Southern	294	7	3	0	22	53	16	2129	28	288	1318	45	19	8	53
33.	Brookline	1872	77	6	0	555	492	27	1927	82	325	765	19	10	8	118
34.	Bristol, Fourth	390	29	2	0	39	288	46	1249	41	195	556	39	40	9	84
35.	Plymouth, Second	657	18	0	0	158	292	18	1489	138	439	548	136	29	3	20
36.	Chicopee	353	7	1	0	43	116	33	661	11	256	79	22	24	5	70
37.	Worcester, First Northern	359	5	1	1	28	90	71	922	37	311	158	41	22	4	69
38.	Charlestown	149	16	0	0	63	106	0	4994	311	2121	1823	28	114	7	290
39.	Middlesex, First Southern	815	59	8	0	142	168	45	1122	27	265	321	74	30	5	58
40.	Essex, Eastern	616	21	1	0	54	79	12	838	66	319	111	33	44	2	52
41.	Norfolk, Western	467	37	7	0	58	167	75	1864	59	238	1286	88	29	17	44
42.	Middlesex, Central	581	12	0	0	173	327	36	1130	54	270	507	82	13	2	29
43.	Worcester, Second Southern	171	15	0	0	16	27	5	654	24	95	325	18	16	1	4
44.	Hampden, Western	213	16	0	0	20	60	27	1261	15	261	144	46	7	4	51
45.	Berkshire, Northern	182	7	1	0	6	104	18	518	7	245	40	14	1	3	39
46.	Marlborough	429	25	2	0	49	92	21	497	22	153	125	23	31	9	14
47.	Worcester, Second Eastern	199	11	1	0	15	71	24	607	18	74	289	12	30	0	36
48.	Newburyport	414	14	1	0	60	131	6	714	44	144	264	20	29	8	54
49.	Plymouth, Third	332	10	0	1	47	154	8	649	26	109	139	28	24	6	17
50.	Peabody	560	58	0	0	51	166	12	1020	39	390	121	31	88	5	32
51.	Leominster	288	5	1	0	19	51	24	545	20	220	80	17	21	6	23
52.	Worcester, Western	119	0	0	0	16	35	11	699	20	80	369	0	0	6	14
53.	Worcester, Third Southern	181	0	4	0	22	90	22	509	14	72	114	13	5	5	7
54.	Hampden, Eastern	132	4	0	0	9	5	17	993	26	112	556	36	19	6	20
55.	Plymouth, Fourth	235	7	1	0	40	198	16	1110	57	206	375	46	21	6	49
56.	Norfolk, Southern	304	16	2	0	64	134	15	1571	22	151	990	57	15	5	13
57.	Middlesex, First Northern	174	4	0	0	31	89	13	1268	22	69	599	34	64	2	6
58.	Worcester, First Eastern	125	8	0	0	28	43	25	945	33	76	740	29	0	1	19
59.	Berkshire, Fourth	97	12	0	0	13	81	11	449	14	120	119	40	0	5	38
60.	Essex, Second	194	9	0	0	18	80	16	812	0	69	463	37	8	4	45
61.	Barnstable, First	496	23	2	0	55	368	13	1403	39	238	290	53	39	11	30
62.	Barnstable, Second	262	20	3	0	48	313	15	569	15	100	313	23	1	4	45
63.	Berkshire, Southern	149	11	1	1	13	229	7	319	12	57	108	12	4	1	17
64.	Natick	264	13	0	0	67	77	6	510	9	138	178	19	10	1	31
65.	Lee	36	3	0	0	2	60	7	450	2	66	260	21	6	2	12
66.	Hampshire, Eastern	63	2	0	0	10	28	9	157	4	26	42	6	10	3	8
67.	Franklin, Eastern	57	1	0	0	2	20	8	119	4	10	32	8	1	0	6
68.	Essex, Third	73	0	0	0	8	14	4	194	6	42	62	11	6	0	7
69.	Winchendon	22	0	0	0	7	7	5	156	2	41	30	7	13	3	2
70.	Dukes County	91	2	0	0	16	188	4	132	2	15	41	4	2	2	16
71.	Williamstown	17	0	1	0	2	37	5	140	0	25	51	6	6	4	3
72.	Nantucket	67	1	0	0	4	35	0	175	3	14	47	7	20	1	12
		75,619	3,567	284	20	14,202	23,304	3,545	163,031	7,927	52,588	46,657	4,506	5,189	840	8,544

Grand Total of all Cases, 409,823

STATISTICS OF THE DISTRICT COURTS OF MASSACHUSETTS FROM OCTOBER 1, 1931 TO OCTOBER 1, 1932
AS REPORTED BY THE CLERKS OF SAID COURTS.

Compiled by the Administrative Committee of District Courts

DISTRICT COURTS	Civil Writs Entered	Removals to S. C.	Reported to App. Div.	Appealed to S. J. C.	Supplementary Process	Small Claims	Insane	Criminal Cases Begun	Criminal Appeals	Drunkenness	Automobile Cases—Total	Operating under inf. of int. liquor	Int. Liquor Cases	Inquests	Juvenile Cases under 17 years
1. Worcester, Central	6420	95	26	3	548	946	476	7086	208	3564	1517	205	98	48	521
2. Springfield	3176	114	9	0	529	1140	182	9168	83	2005	2049	183	416	53	438
3. Middlesex, First Eastern	6176	166	21	1	1089	2316	57	7221	202	2231	3194	239	66	17	336
4. Roxbury	1723	45	1	0	800	829	2	12,932	926	3541	3403	136	386	13	709
5. Bristol, Third	1765	63	16	4	147	505	105	3404	480	959	535	82	174	21	180
6. Middlesex, Third Eastern	5796	154	41	2	945	988	177	8418	345	3118	1509	217	531	36	381
7. Dorchester	1654	54	3	0	1345	864	0	6205	343	1512	1817	94	94	20	330
8. Lowell	2164	87	11	1	209	363	141	3584	67	1909	544	47	170	42	124
9. Bristol, Second	1802	164	1	0	145	543	105	3601	187	1533	584	60	111	21	305
10. Essex, Southern	3810	223	8	1	353	578	93	3816	272	1567	748	131	273	16	232
11. Lawrence	1817	68	11	3	146	116	42	3493	187	1617	430	92	38	7	254
12. Norfolk, East	3688	120	3	2	591	1620	61	5553	171	1514	2278	302	137	50	276
13. Somerville	2594	113	4	0	464	551	89	1978	299	959	166	78	77	13	149
14. West Roxbury	665	32	1	0	500	479	0	3400	406	1021	928	79	118	13	165
15. Essex, First	2067	235	3	0	238	417	404	4324	305	832	2293	141	194	19	90
16. Brockton	1531	73	7	0	398	415	140	3070	164	1038	688	91	88	37	176
17. East Boston	734	46	2	0	368	399	0	6546	220	3033	1009	32	435	0	676
18. Chelsea	2427	569	8	0	577	595	14	4288	392	1885	1079	104	115	19	211
19. South Boston	371	37	1	0	92	130	0	6683	209	3597	1171	43	280	10	311
20. Essex, North Central	1298	59	3	0	60	108	13	985	101	558	134	47	33	10	29
21. Holyoke	616	46	3	0	46	373	40	1274	26	572	147	40	38	9	64
22. Hampshire	569	27	0	0	80	469	88	1636	112	518	385	85	74	14	115
23. Middlesex, Second Eastern	2417	107	10	0	456	511	177	2269	84	781	461	102	43	33	204
24. Berkshire, Central	908	28	0	0	73	303	34	1784	42	503	626	61	86	12	102
25. Bristol, First	842	53	1	0	95	192	148	1785	105	452	807	73	42	20	50
26. Middlesex, Fourth Eastern	1470	50	5	0	298	534	7	2621	63	676	994	139	52	11	127
27. Newton	1947	74	24	0	539	628	50	2213	173	526	626	77	15	24	123
28. Fitchburg	452	18	0	0	49	164	17	1188	35	533	179	37	5	4	64
29. Norfolk, Northern	1273	40	11	0	420	438	99	1658	109	521	576	99	14	26	77
30. Brighton	554	9	0	0	485	395	0	2623	215	903	763	60	80	20	123
31. Franklin, Greenfield	394	13	1	0	24	230	31	895	21	165	239	45	35	18	45
32. Worcester, First Southern	294	7	3	0	22	53	16	2129	28	288	1318	45	19	8	53
33. Brookline	1872	77	6	0	555	492	27	1927	82	325	765	19	10	8	118
34. Bristol, Fourth	390	29	2	0	39	288	46	1249	41	195	556	39	40	9	84
35. Plymouth, Second	657	18	0	0	158	292	18	1489	138	439	548	136	29	3	20
36. Chicopee	353	7	1	0	43	116	33	661	11	256	79	22	24	5	70

32. Worcester, First Southern	294	7	3	0	22	53	16	2129	28	288	1318	45	19	8	53
33. Brookline	1872	77	6	0	555	492	27	1927	82	325	765	19	10	8	118
34. Bristol, Fourth	390	29	2	0	39	288	46	1249	41	195	556	39	40	9	84
35. Plymouth, Second	657	18	0	0	158	292	18	1489	138	439	548	136	29	3	20
36. Chicopee	353	7	1	0	43	116	33	661	11	256	79	22	24	5	70
37. Worcester, First Northern	359	5	1	1	28	90	71	922	37	311	158	41	22	4	69
38. Charlestown	149	16	0	0	63	106	0	4994	311	2121	1823	28	114	7	290
39. Middlesex, First Southern	815	59	8	0	142	168	45	1122	27	265	321	74	30	5	58
40. Essex, Eastern	616	21	1	0	54	79	12	838	66	319	111	33	44	2	52
41. Norfolk, Western	467	37	7	0	58	167	75	1864	59	238	1286	88	29	17	44
42. Middlesex, Central	581	12	0	0	173	327	36	1130	54	270	507	82	13	2	29
43. Worcester, Second Southern	171	15	0	0	16	27	5	654	24	95	325	18	16	1	4
44. Hampden, Western	213	16	0	0	20	60	27	1261	15	261	144	46	7	4	51
45. Berkshire, Northern	182	7	1	0	6	104	18	518	7	245	40	14	1	3	39
46. Marlborough	429	25	2	0	49	92	21	497	22	153	125	23	31	9	14
47. Worcester, Second Eastern	199	11	1	0	15	71	24	607	18	74	289	12	30	0	36
48. Newburyport	414	14	1	0	60	131	6	714	44	144	264	20	29	8	54
49. Plymouth, Third	332	10	0	1	47	154	8	649	26	109	139	28	24	6	17
50. Peabody	560	58	0	0	51	166	12	1020	39	390	121	31	88	5	32
51. Leominster	288	5	1	0	19	51	24	545	20	220	80	17	21	6	23
52. Worcester, Western	119	0	0	0	16	35	11	699	20	80	369	0	0	6	14
53. Worcester, Third Southern	181	0	4	0	22	90	22	569	14	72	114	15	5	5	7
54. Hampden, Eastern	132	4	0	0	9	5	17	993	26	112	556	36	19	6	20
55. Plymouth, Fourth	235	7	1	0	40	198	16	1110	57	206	375	46	21	6	49
56. Norfolk, Southern	304	16	2	0	64	134	15	1571	22	151	990	57	15	5	13
57. Middlesex, First Northern	174	4	0	0	31	89	13	1268	22	69	599	34	64	2	6
58. Worcester, First Eastern	125	8	0	0	28	43	25	945	33	76	740	29	0	1	19
59. Berkshire, Fourth	97	12	0	0	13	81	11	449	14	120	119	40	0	5	38
60. Essex, Second	194	9	0	0	18	80	16	812	0	69	463	37	8	4	45
61. Barnstable, First	496	23	2	0	55	368	13	1403	39	238	290	53	39	11	30
62. Barnstable, Second	262	20	3	0	48	313	15	569	15	100	313	23	1	4	45
63. Berkshire, Southern	149	11	1	1	13	229	7	319	12	57	108	12	4	1	17
64. Natick	264	13	0	0	67	77	6	510	9	138	178	19	10	1	31
65. Lee	36	3	0	0	2	60	7	450	2	66	260	21	6	2	12
66. Hampshire, Eastern	63	2	0	0	10	28	9	157	4	26	42	6	10	3	8
67. Franklin, Eastern	57	1	0	0	2	20	8	119	4	10	32	8	1	0	6
68. Essex, Third	73	0	0	0	8	14	4	194	6	42	62	11	6	0	7
69. Winchendon	22	0	0	0	7	7	5	156	2	41	30	7	13	3	2
70. Dukes County	91	2	0	0	16	188	4	132	2	15	41	4	2	2	16
71. Williamstown	17	0	1	0	2	37	5	140	0	25	51	6	6	4	3
72. Nantucket	67	1	0	0	4	35	0	175	3	14	47	7	20	1	12
	75,619	3,567	284	20	14,202	23,304	3,545	163,031	7,927	52,588	46,657	4,506	5,189	840	8,544

Grand Total of all Cases, 409,823

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comparison. It should be noted that there were almost 8,000 more civil writs entered in the year 1931–1932 than in the previous year, and about 10,000 more than in 1929–1930. The table also shows that the civil business of these courts has almost doubled in the past seven years. The jurisdiction was enlarged by St. 1929, c. 316, and the bringing of suits for larger amounts which formerly had to be brought in the Superior Court may account for some of the marked increase in the last two years.

TRIAL JUSTICES

There were presented to the ten Trial Justices now in this Commonwealth during the year September 30, 1931, to September 30, 1932, 1,810 criminal cases as shown below. Trial justices have no civil jurisdiction.

Criminal Cases before Trial Justices for the Year ending September 30, 1932

Trial Justice.	Cases Pending Sept. 30, 1931.	No. Cases Begun During Year.	No. Cases Appealed.	No. Cases Bound Over to Grand Jury.	No. Cases Pending Sept. 30, 1932.
Colver J. Stone, Andover	–	28	1	2	–
Cornelius J. Mahoney, North Andover	15	63	–	12	20
John L. Smith, Barre	–	88	3	3	–
John R. Healey, Hardwick	–	68	2	–	–
Daniel J. Riley, Hopkinton	–	11	1	–	–
Fred E. Morris, Hudson	14	196	5	14	3
George B. Haas, Ludlow	–	425	7	5	–
Luke B. Colbert, Marblehead	–	154	1	21	–
Walter H. Southwick, Nahant	–	105	2	–	–
William E. Ludden, Saugus	13	672	7	5	7
Totals	42	1,810	29	62	30

DEPARTMENT OF INDUSTRIAL ACCIDENTS

Of the 144,133 accident reports filed with the Department during the year 1931, 50,006 were for injuries causing the loss of at least one day or one shift, called in the report of the Department "tabulatable injuries." Of this latter number 2,018 cases were not insured, and how many of them ripened into law suits we do not know. Neither can we know how many of the remaining 47,988 cases would in fact have gone before our courts if they had not been adjusted before the Industrial Accident Board. But when we consider that 282 of these 50,006 cases resulted in death, 5 in per-

manent total disability, 1,031 in permanent partial disability, and that 65 per cent of the remainder represent a temporary disability of more than a week, it is evident that the courts have been relieved from some thousands of cases that would otherwise have been brought to recover damages. The Board is not a court, but an administrative commission. It was in part created to relieve our courts of the congestion of cases growing out of the relation of master and servant. In addition to its administrative duties, the Board, and its members, hold several thousands of hearings each year to determine questions of fact and law arising under the Workmen's Compensation Act. Its work is properly to be considered when surveying the administration of justice.

In lieu of damages and settlements that would have been paid to injured employees, if the Workmen's Compensation Act did not exist, there was paid by the various authorized insurance companies operating under this act the sum of $8,978,058.04 during the year 1931 at a gross cost of $229,586.89. As there were receipts of $33,740.28 to be credited, the net cost to the Commonwealth was $195,846.61. The gross cost was $14,681.73 more, the receipts $6,930.86 more and the net cost $7,758.87 more, than in 1930 (see 7th Report, p. 52).

There were 11,735 less "tabulatable" injuries in 1931 than in 1930. This was presumably due to unemployment.

BOARD OF TAX APPEALS

The state Board of Tax Appeals is an administrative tribunal, to which have been transferred some of the functions formerly imposed on the Superior Court. It came into existence on December 1, 1930, under St. 1930, c. 416, later amended by St. 1931, c. 218. After adopting a carefully prepared set of rules of practice and obtaining quarters in the Metropolitan Commission Building, it held its first hearing on February 9, 1931.

From December 1, 1930 to November 30, 1931, three hundred and one appeals were filed. Since November 30, 1931, over one thousand appeals have been filed with the board. All but a small number of these appeals are from decisions of boards of assessors and require a determination of the fair cash value of parcels of real estate. In some instances the appeals have been settled by agreement between the parties. Every case which is not settled must be heard by the board, and it is evident that pending appeals will engage the time of the board for months to come. In order to expedite the hearing of these cases the board has requested counsel

for the parties to prepare stipulations covering the formal and undisputed facts or to be prepared to prove those facts promptly, and has indicated also that written reports of experts may be introduced as exhibits, confining their oral testimony to the main features of their reports. Counsel have cooperated with the board in the effort thus to save time.

FROM DECEMBER 1, 1930, TO NOVEMBER 30, 1932

Appeals filed	1,415
Appeals withdrawn or abated	171
Appeals decided	381
Appeals pending decision	43
Appeals ripe for hearing, but unheard	591
Appeals not ripe for hearing	219

Of the total number of appeals 111 have been from decisions of the Commissioner and the remainder from the decisions of boards of assessors. In 17 cases appeals have been taken to the Supreme Judicial Court and perfected by transmission of the printed record to the full court. Of these cases 7 have been decided by the court and the others are pending.

Under the statute, such of the reports and opinions of the board as are of public interest are published and, by decision of the Governor and Council, advance sheets of the decisions and opinions may be obtained from the board.

T. HOVEY GAGE, *Chairman.*
FREDERICK LAWTON.
CHARLES THORNTON DAVIS.
WILFRED BOLSTER.
HARRY R. DOW.
CHARLES L. HIBBARD.
FREDERICK W. MANSFIELD.
WILLIAM G. THOMPSON.
FRANK W. GRINNELL.

Note 1

Judge Dow took no part in the consideration of those parts of the report relating to congestion in the Superior Court and motor vehicle litigation, as he was unable to attend meetings when those subjects were discussed after the expiration of his term of membership in the Council.

Note 2

See Memorandum by Mr. Thompson on the following page.

MEMORANDUM BY MR. THOMPSON

While I am in general agreement with the specific recommendations of the Council (except the special charge for jury trials) I feel constrained to suggest another aspect of the serious problem of congestion.

There seems to be no doubt that the machinery now provided for the determination of controversies operates practically for the encouragement of certain types of litigation including all types of tort claims. It appears not to operate in contract cases or generally in commercial controversies. Indeed it is often urged that the business world shuns the courts and prefers various types of arbitration. It is assumed that if we could get rid of tort cases business disputes would once more turn to the courts. I doubt this assumption. I think the difficulty is a deeper one. It seems to me the cause which leads one class of litigants to flock to the courts and another to shun them is not wholly what the Report calls the "delusion" that juries will be more apt than judges to be credulous or over-sympathetic with plaintiffs. If the statistics cited in the Report are interpreted as showing that judges are more favorable to plaintiffs than juries, that fact cannot in my opinion be regarded as wholly flattering to the judges. In what we call a jury trial the judge and jury form *one* tribunal. The verdict is the result of two forces, the personality of the judge and the composite personality of the jury. Each is supposed to help and sometimes to check the other. That was and still is the common law theory. But that theory has suffered some mutilation at our hands; and the result has been to discourage that firm control and wise guidance which the common law requires of its judges in jury trials, and also to encourage in some judges (though not in all) a certain detachment, feeling of irresponsibility for the result, and even timidity in dealing with juries and also with litigants. This attitude in time becomes chronic, so that it may well be doubted whether a restoration of the power to "charge on the facts" (as it is somewhat inaccurately called) would be a sufficient remedy as the bench is now constituted. That however need not be labored here. The point is that such a situation encourages speculative litigation.

The remedy, if there be one, must go deeper than putting pressure on would-be litigants to resort to jury-waived sessions or to the district courts. Indeed, as to the district courts, while I am in hearty sympathy with all measures looking to the gradual unification of our courts, I think we should consider, before we go further along some of the lines suggested in the Council's report, the

fitness of the men upon whom we propose to impose enlarged responsibilities, for, as some one has said, "it is the horse that draws the wagon, not the harness." That some of the district judges are eminently fit cannot be doubted; that *all* of them are so, is, in my opinion, open to doubt. I regret that I have been obliged to be absent from the Commonwealth during the more recent meetings of the Council. I reserve the liberty of a further expression of opinion if that should seem necessary, after I have had an opportunity to discuss more fully with my associates the matters referred to in this memorandum.

W. G. THOMPSON.

APPENDIX A

STATISTICAL TABLES

INDEX

APPENDIX B

STATISTICAL TABLES

(*For Index to Statistical Tables see page 5*)

TABLE OF CASES DECIDED BY THE SUPREME JUDICIAL COURT, 1874–1932

COURT YEAR ENDING AUG. 31.	Number of Cases Decided.	Reported in the Following Volumes of Massachusetts Reports.	COURT YEAR ENDING AUG. 31.	Number of Cases Decided.	Reported in the Following Volumes of Massachusetts Reports.
1875	394	115, 116, 117, 118	1904	354	184, 185, 186
1876	418	118, 119, 120	1905	384	186, 187, 188
1877	403	120, 121, 122, 123	1906	484	188, 189, 190, 191, 192
1878	388	123, 124, 125	1907	441	192, 193, 194, 195, 196
1879	334	125, 126, 127	1908	397	196, 197, 198, 199
1880	316	127, 128, 129	1909	413	199, 200, 201, 202, 203
1881	372	129, 130, 131	1910	356	203, 204, 205, 206
1882	293	131, 132, 133	1911	390	206, 207, 208, 209
1883	344	133, 134, 135	1912	388	209, 210, 211, 212
1884	374	135, 136, 137	1913	427	212, 213, 214, 215
1885	367	137, 138, 139, 140	1914	472	215, 216, 217, 218
1886	385	140, 141, 142	1915	432	218, 219, 220, 221
1887	399	142, 143, 144, 145	1916	433	221, 222, 223, 224
1888	321	145, 146, 147	1917	417	224, 225, 226, 227, 228
1889	349	147, 148, 149	1918	391	228, 229, 230, 231
1890	344	149, 150, 151, 152	1919	340	231, 232, 233
1891	321	152, 153, 154	1920	341	233, 234, 235, 236
1892	422	154, 155, 156, 157	1921	378	236, 237, 238, 239
1893	354	157, 158, 159	1922	356	239, 240, 241, 242
1894	341	159, 160, 161, 162	1923	307	242, 243, 244, 245, 246
1895	333	162, 163, 164	1924	422	246, 247, 248, 249
1896	356	164, 165, 166	1925	419	249, 250, 251, 252, 253
1897	371	166, 167, 168, 169	1926	483	253, 254, 255, 256, 257
1898	397	169, 170, 171, 172	1927	515	257, 258, 259, 260, 261
1899	339	172, 173, 174	1928	467	261, 262, 263, 264
1900	366	174, 175, 176	1929	496	264, 265, 266, 267
1901	381	176, 177, 178, 179	1930	487	268, 269, 270, 271
1902	381	179, 180, 181, 182	1931	459	271, 272, 273, 274, 275, 276
1903	348	182, 183, 184	1932	427	276, 277, 278, 279, 280*

* Volume 279 will be out before January 1, 1933.
The report of the last case decided in the court year 1931–1932 ends on page 162 of volume 280; that volume therefore still is in process of publication.

REFERENCES TO AUDITORS AND MASTERS IN THE SUPERIOR COURT

Calendar Year, 1931

County.	Auditor.	Master.
Barnstable	1	2
Berkshire	3	7
Bristol	16	45
Essex	34	64
Franklin	15	8
Hampden	50	34
Hampshire	13	10
Middlesex	39	134
Norfolk	10	35
Plymouth	10	34
Suffolk	180	451
Worcester	97	41
	468	865

January 1 to September 30, 1932, inc.

County.	Auditor.	Master.
Barnstable	11	6
Berkshire	9	9
Bristol	23	32
Essex	464	56
Franklin	7	4
Hampden	137	52
Hampshire	15	4
Middlesex	289	109
Norfolk	47	33
Plymouth	27	21
Suffolk	476	265
Worcester	585	49
	2,090	640

Two or more cases tried together are counted as one reference.

The increase in the number of auditors from 468 in 1931 to 2,090 in the first nine months of 1932, must be accounted for by the use of auditors in accident cases explained earlier in this report.

AUDITORS, MASTERS AND REFEREES, AMOUNTS EXPENDED 1925 TO 1931, INC., BY COUNTIES

County.	1925.	1926.	1927.	1928.	1929.	1930.	1931.
Barnstable	$795 83	$631 23	$1,066 58	$1,231 94	$692 90	$2,316 03	$569 27
Berkshire	1,227 92	1,535 80	3,225 60	2,103 61	5,864 27	2,796 39	2,987 08
Bristol	3,468 36	4,959 28	5,333 79	5,497 40	9,140 57	7,159 43	9,212 01
Dukes	15 00	202 71	98 90	381 24	321 27	90 00	103 75
Essex	15,278 77	13,531 28	14,570 83	14,658 94	16,316 63	10,413 48	9,031 47
Franklin	347 00	1,673 14	1,249 42	795 83	2,065 83	912 50	1,097 50
Hampden	6,219 79	15,362 85	13,411 80	9,484 62	12,887 65	19,649 79	15,996 92
Hampshire	1,487 18	1,815 21	2,321 39	1,733 79	471 99	2,434 92	1,659 17
Middlesex	28,184 55	23,864 70	23,976 96	22,853 33	21,666 94	28,074 70	26,806 58
Nantucket	92 50	50 00	–	–	–	530 00	100 00
Norfolk	4,241 13	4,953 15	3,941 73	12,993 35	10,308 72	6,979 17	11,336 55
Plymouth	5,066 60	8,374 77	5,703 12	4,795 07	6,672 63	7,100 40	8,635 59
Suffolk	94,313 05	59,027 78	67,920 79	66,906 72	68,598 79	73,730 92	85,501 17
Worcester	11,707 43	10,471 07	10,341 14	18,810 35	6,827 78	8,164 13	8,977 14
	$172,445 11	$146,452 97	$153,162 05	$162,246 19	$161,385 97	$170,351 86	$182,014 20

NOTE: In Suffolk County these figures apply to the Superior Court (civil) only. In other counties they apply to all courts.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE LAW, EQUITY, DIVORCE AND CRIMINAL BUSINESS OF THE SUPERIOR COURT

FOR THE YEAR ENDING JUNE 30, 1932, IN COMPLIANCE WITH GENERAL LAWS, CHAPTER 221, SECTION 24, AS AMENDED
(Naturalization Business not included)

COUNTIES.	CIVIL CASES.										
	NUMBER PENDING AT BEGINNING OF YEAR.			NUMBER OF NEW CASES ENTERED DURING THE YEAR.			NUMBER DISPOSED OF IN PREVIOUS YEARS AND BROUGHT FORWARD THIS YEAR.			NUMBER TRANSFERRED FROM LAW TO EQUITY.	NUMBER TRANSFERRED FROM EQUITY TO LAW.
	Law.	Equity.	Divorce and Nullity.	Law.	Equity.	Divorce and Nullity.	Law.	Equity.	Divorce and Nullity.		
Barnstable	384	50	2	227	22	–	–	–	–	–	–
Berkshire	578	145	2	306	35	–	–	–	–	–	1
Bristol	2,708	499	2	972	124	–	3	–	–	–	–
Dukes	70	13	7	21	2	–	–	–	–	–	–
Essex	6,535	735	5	3,099	236	–	–	–	1	2	–
Franklin	342	77	3	169	17	–	–	–	–	–	–
Hampden	4,409	759	328	2,252	207	2	–	–	–	–	–
Hampshire	454	86	6	236	16	1	–	–	–	–	–
Middlesex	12,700	1,416	26	5,728	489	1	14	2	–	1	1
Nantucket	24	3	–	43	3	–	–	–	–	–	–
Norfolk	3,823	357	11	1,582	102	–	2	–	–	1	1
Plymouth	1,734	294	110	717	74	71	–	1	1	–	1
Suffolk	34,481	5,551	84	16,209	1,846	6	123	1	–	9	21
Worcester	5,981	643	6	2,903	238	–	–	–	–	–	–
Total	74,223	10,628	592	34,464	3,411	81	142	4	2	13	25

Worcester	2,445	338	237	3	5,449	652	644	3	143	46	43	–	1
Total	74,223	10,628	592	34,464	3,411	81	142	4	2	13	23		

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE LAW, EQUITY, DIVORCE AND CRIMINAL BUSINESS OF THE SUPERIOR COURT—*Continued*

Counties.	CIVIL CASES.												
	Number Finally Disposed of.				Number Pending at End of Year, including Pending Inactive Cases.				Number Tried during Year.				Number of Equity Cases in which Issues were Tried to a Jury.
	Law.		Equity.	Divorce and Nullity.	Law.		Equity.	Divorce and Nullity.	Law.		Equity.	Divorce and Nullity.	
	Jury.	Without Jury.			Jury.	Without Jury.			Jury.	Without Jury.			
Barnstable	156	39	18	2	311	105	54	–	19	6	–	–	–
Berkshire	262	71	40	–	467	85	140	2	23	10	11	–	–
Bristol	959	213	141	–	1,970	541	482	2	125	23	13	–	–
Dukes	14	18	2	–	31	28	13	7	4	–	1	–	–
Essex	2,572	465	253	3	5,773	824	720	3	231	56	33	–	–
Franklin	168	21	31	3	272	50	63	–	37	8	16	1	–
Hampden	1,771	540	229	118	3,520	830	737	212	229	57	27	19	–
Hampshire	221	54	26	3	337	78	76	4	53	1	–	1	1
Middlesex	5,070	802	462	10	10,980	1,591	1,446	17	524	153	21	1	–
Nantucket	5	8	–	–	27	27	6	–	–	–	–	–	5
Norfolk	1,182	221	106	4	3,195	810	354	7	99	21	17	–	–
Plymouth	634	122	81	75	1,442	254	288	107	52	9	25	60	–
Suffolk	13,066	2,243	1,855	49	30,176	5,349	5,552	41	966	335	398	10	12
Worcester	2,445	338	237	3	5,449	652	644	3	143	46	43	–	1
Total	28,525	5,155	3,481	270	63,950	11,224	10,575	405	2,505	725	605	92	19

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE LAW, EQUITY, DIVORCE AND CRIMINAL BUSINESS OF THE SUPERIOR COURT — *Continued*

Counties.	Civil Cases.													
	Number Awaiting Trial at End of Year.				Number Marked Inactive during the Year under Rule of the Court.				Number Marked Inactive at Any Time, Pending at End of Year, and Subject to Dismissal under the Rule.				Number of Days during which Court has Sat for Hearings or Trials.	
	Law.		Equity.	Divorce and Nullity.	Law.		Equity.	Divorce and Nullity.	Law.		Equity.	Divorce and Nullity.		
	Jury.	Without Jury.			Jury.	Without Jury.			Jury.	Without Jury.			Jury.	Without Jury.
Barnstable	303	103	54	–	7	2	–	–	37	41	20	–	22	3
Berkshire	346	37	49	–	–	–	–	–	85	30	29	2	31	18
Bristol	1,810	293	122	1	9	3	8	–	478	256	181	1	157	33
Dukes	–	–	–	–	13	11	4	1	4	6	3	1	–[1]	–[1]
Essex	5,721	813	691	3	8	3	3	–	1,227	326	275	3	295	72
Franklin	155	19	28	–	16	3	10	–	53	16	24	–	24	3
Hampden	3,491	824	732	201	5	2	3	2	690	287	289	160	194	75
Hampshire	288	67	41	3	–	–	–	–	53	37	29	3	34	1
Middlesex	10,735	1,535	1,377	15	21	5	4	–	2,232	578	481	12	559	165
Nantucket	28	28	4	–	–	–	–	–	–	–	–	–	1	3
Norfolk	3,155	801	349	6	11	1	3	–	709	189	118	5	130	27
Plymouth	1,381	246	242	69	120	27	20	8	185	111	107	23	86	23
Suffolk	27,410	4,308	4,262	27	70	24	12	–	5,057	1,628	1,719	22	1,369	804
Worcester	5,378	610	626	3	349	87	74	–	933	265	259	1	240	85
Total	60,201	9,684	8,577	328	629	168	141	11	11,743	3,770	3,534	233	3,142	1,312

[1] No separate sessions in Dukes County. Court sat during the year about three days for all business, civil and criminal.

Total . . .	60,201	9,684	8,577	328	629	168	141	11	11,743	3,770	3,534	233	3,142	1,312

[1] No separate sessions in Dukes County. Court sat during the year about three days for all business, civil and criminal.

TABLE I.

COMPARISON COUNTY POPULATION, VALUATION AND LITIGATION

	Suffolk	Middlesex	Essex	Norfolk	Barnstable	Berkshire	Bristol	Franklin	Hampden	Hampshire	Plymouth	Worcester	Dukes and Nantucket
Population (1930 U. S. census)	879,536	934,924	498,040	299,426	32,305	120,700	364,590	49,612	335,496	72,801	162,311	491,242	8,631
%	.20	.22	.11+	.07	.007	.03−	.08	.01	.08	.02−	.04−	.11	−
Valuation (000 omitted)	$2,259,359	$1,460,945	$780,877	$653,132	$94,026	190,525	$543,055	$91,198	$659,826	$103,918	$280,805	$747,829	$31,023
%	.28	.18	.10−	.08	.01+	.02	.07	.01	.08	.01+	.03	.09	−
Civil entries 1930–31 Superior	20,507	6,500	3,118	1,655	204	347	1,190	174	2,135	221	923	2,897	33
% (approx.)	.51	.16	.08	.04	.005	.008	.03	.004	.05	.005	.02	.07	−
District Courts (not removed) (1931)	44,421	20,169	9,284	6,791	789	1,168	4,011	440	4,602	1,124	2,177	7,368	139
%	.43	.19	.09	.06	.005	.01	.04	.004	.04	.01	.02	.07	−
All civil entries	64,928	26,669	12,402	8,446	993	1,515	5,201	614	6,737	1,345	3,100	10,265	172
%	.45	.18	.08	.06	.005	.01	.04	.004	.04	.01	.02	.07	−

TABLE 2.

STATE—EXCEPT SUFFOLK

	Middlesex	Essex	Norfolk	Barnstable	Berkshire	Bristol	Franklin	Hampden	Hampshire	Plymouth	Worcester	Dukes and Nantucket
Population	934,924	498,040	299,426	32,305	120,700	364,590	49,612	335,496	72,801	162,311	491,242	8,631
%	.280	.148	.089	.009	.035	.108	.014	.099	.021	.048	.145	.002
Civil entries—Superior	6,500	3,118	1,655	204	347	1,190	174	2,135	221	923	2,897	33
%	.335	.160	.085	.010	.017	.061	.008	.110	.011	.047	.149	.001
All civil entries	26,669	12,402	8,446	993	1,515	5,201	614	6,747	1,345	3,100	10,265	172
%	.344	.160	.109	.012	.019	.067	.007	.086	.017	.040	.131	.002

Civil entries—Superior	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	.110	.011	.047	.149	.001
%	.335	.160	.085	.010	.017	.061	.008	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
All civil entries	26,669	12,402	8,446	993	1,515	5,201	614	6,747	1,345	3,100	10,265	172
%	.344	.160	.109	.012	.019	.067	.007	.086	.017	.040	.131	.002

TABLE 3.

NUMBER OF INHABITANTS PER CASE ENTERED AND COUNTY DISTRIBUTION

	Suffolk	Middlesex	Essex	Norfolk	Barnstable	Berkshire	Bristol	Franklin	Hampden	Hampshire	Plymouth	Worcester	Dukes and Nantucket	Average
Superior	42	76	159	181	157	350	306	285	157	329	175	169	260	106
Rank	1	2	5	8	4	13	11	10	3	12	7	6	9	–
District	19	24	53	44	42	103	91	112	72	64	77	66	62	41
Rank	1	2	5	4	3	12	11	13	9	7	10	8	6	–
All	13	18	40	35	32	79	70	80	49	54	52	48	50	29
Rank	1	2	5	4	3	12	11	13	7	10	9	6	8	–
% urban (1930 census)	100	92	94	87	34	81	90	58	92	76	75	80	0	–
Rank	1	3	2	6	12	7	5	11	4	9	10	8	13	–

LOCAL ACTIO		
Ejectment	Replevin	Petitions
	1	

ACTIONS I
WITHOU

Contract

T

TRANSITORY ACTIONS B

LOCAL ACTIONS.				"CONTRACT," OR "CONTRACT OR TORT."																		
				JURISDICTION BY RESIDENCE.					JURISDICTION BY PLACE OF BUSINESS.									JURISDICTION BY RESIDENCE.				
Ejectment	Replevin	Petitions	Scire Facias	All of Suffolk.	A plff. of Suffolk.	A deft. of Suffolk.	Neither of Suffolk.	Neither of Mass.	All of Suffolk.	A plff. of Suffolk.	A deft. of Suffolk.	Neither of Suffolk.	Neither of Mass.	Action abated—Wrong venue.	Wrong venue—no plea.	Total in "Contract" or " ontract or Tort."	All of Suffolk.	A plff. of Suffolk.	A deft. of Suffolk.	Neither of Suffolk.		
	1			98	18	6	2		8	4	1				1		446	195	8	1		

ACTIONS DEFAULTED WITHOUT ANSWER.

Contract or C. or T.
56
Tort.
285

TRANSITORY ACTIONS BY TRUSTEE

"CONTRACT" OR "CONTRACT OR TORT."																						
JURISDICTION DEPENDENT ON TRUSTEE.								JURISDICTION NOT DEPENDENT ON TRUSTEE.								JURISDICTION ON TR						
Trustee giving jurisdiction answers "Funds."	Trustee giving jurisdiction answers "No Funds."	Trustee discharged before answer.	Trustee defaulted and discharged.	Trustee defaulted.	Trustee not served or insuf. and discharged.	Trustee charged.		Trustee answers "Funds."	No answer of Trustee and discharged.	Trustee discharged.	Trustee charged.	Trustee defaulted—no answer.	Trustee answers "No Funds."			Trustee giving jurisdiction answers "Funds."	Trustee giving jurisdiction answers "No Funds."					
	1							5	12			3										

CIVIL CASES ENTERED IN THE SUPERIOR COURT IN JANUARY, 1930

TRANSITORY ACTIONS BY COMMON WRIT

			TORT.																	
			Jurisdiction by Residence.					Jurisdiction by Place of Business.							Accident C					
	Wrong venue—no plea.	Total in "Contract" or "Tort."	All of Suffolk.	A plff. of Suffolk.	A deft. of Suffolk.	Neither of Suffolk.	Neither of Mass.	All of Suffolk.	A plff. of Suffolk.	A deft. of Suffolk.	Neither of Suffolk.	Neither of Mass.	Action abated—Wrong venue.	Wrong venue—No plea.	*vs.* City.	Property defect.	*vs.* Carrier Place of Accident.		
																	In Suffolk.	Not Suffolk.	Not shown.
	1		446	195	8	1		4	6						14	41	28	4	

TRANSITORY ACTIONS BY TRUSTEE WRIT.

	OR TORT."				TORT.								
	Jurisdiction not pendent on Trustee.				Jurisdiction Dependent on Trustee.				Jurisdiction not Dependent on Trustee.				
charged.	Trustee discharged.	Trustee charged.	Trustee defaulted—no answer.	Trustee answers "No Funds."	Trustee giving jurisdiction answers "Funds."	Trustee giving jurisdiction answers "No Funds."	Trustee discharged before answer.	Trustee discharged after answer.	Trustee defaulted.	Trustee answers "Funds."	Trustee answers "No Funds."	Trustee discharged.	Trustee defaulted.	Trustee charged.	Total in "Tort."
2			3							2			1		

Accident Cases.									
Carrier Place of Accident.			Auto Cases Place of Accident.						
	Not Suffolk.	Not shown.	In Suffolk.	Not Suffolk.	Not shown.	Accident cases—jurisdiction dependent upon place.	Other Torts.	Total Auto Cases.	Total in "Tort."
3	4		372	110	17	17	49	499	

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE LAW, EQUITY, DIVORCE AND CRIMINAL BUSINESS OF THE SUPERIOR COURT — *Concluded*

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE LAW, EQUITY, DIVORCE AND CRIMINAL BUSINESS OF THE SUPERIOR COURT — *Concluded*

Counties.	CRIMINAL CASES.									
	Number remaining at first of year.	Number of Indictments returned.	Number of appeal cases.	Number of actions on bail bonds or recognizances entered.	Number disposed of in previous years brought forward for redisposition.	Number disposed of during year.	Number remaining at end of year.	Number tried during year.	Number awaiting trial at end of year.	Number of days during which Court has sat for trials, hearings or dispositions.
Barnstable	63	55	77	–	–	139	56	17	45	19
Berkshire	73	31	89	3	–	123	73	6	42	21
Bristol	362	522	768	2	3	1,236	421	106	219	82
Dukes	19	7	10	–	–	11	25	5	–	– [1]
Essex	107	647	1,192	34	144	1,930	194	264	179	164
Franklin	26	39	41	–	–	72	34	62	18	18
Hampden	163	239	235	13	1	514	137	78	137	48
Hampshire	112	79	129	31	35	288	98	65	29	45
Middlesex	460	1,810	1,450	5	118	3,091	752	655	649	361
Nantucket	7	3	15	27	–	14	38	7	38	6
Norfolk	384	274	435	1	67	824	337	103	302	83
Plymouth	285	307	427	15	72	749	357	92	162	88
Suffolk	495	1,950	5,106	52	403	6,682	1,324	1,729	1,180	871
Worcester	108	556	447	23	67	1,127	74	182	55	149
Total	2,664	6,519	10,421	206	910	16,800	3,920	3,371	3,055	1,955

[1] No separate sessions in Dukes County, Court sat during the year about three days for all business, civil and criminal.

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

Summary, A.D. 1931

	Actions Entered—Total.	Actions Entered—Over $5000 Ad Damnum.	Actions Removed to Superior Civil Court—Total.	Actions Removed to Superior Civil Court over $5000 Ad Damnum.	Dept. Default Clerk.		Dept. Default Court.		Intg. Filed.		Marked for		Trial List.				Findings.		Appellate Division.						
					Non-Appearance.	Non-Answer.	Non-Appearance.	Non-Answer.	To Plaintiff.	To Defendant.	Motion List.	Trial List.	Non-Suits.	Defaults.	Tried.	Reserved.	For Plaintiff.	For Defendant.	Requests for Report.	Reports Allowed.	Reports Disallowed.	Petitions to Establish.	Reports Proved.	Cases Heard.	Cases Decided.
Contract . .	28,930	331	719	101	10,794	26	140	244	759	2,864	–	–	–	–	2,030	586	1,519	513	221	87	20	15	–	72	85
Tort . .	9,917	405	480	130	657	4	7	30	3,314	1,383	–	–	–	–	1,990	683	1,086	891	91	31	13	3	–	27	26
Contract or Tort	547	18	34	3	93	–	–	–	74	60	–	–	–	–	110	74	–	69	26	2	1	–	–	7	12
All others .	1,094	–	2	–	350	1	4	6	4	16	–	–	–	–	160	15	143	20	4	–	–	–	–	1	1
Totals .	39,948	754	1,235	234	11,894	31	151	280	4,151	4,323	17,820	27,091	717	4,502	4,290	1,358	2,748	1,493	342	120	34	18	–	107	124

Supplementary Process Entries—4180.

P.D. 144.

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

Summary, A.D. 1931

	Appellate Division—*Concluded.*											Defendants' Judgments.					Plaintiffs' Judgments.								
	Affirmed.	Reversed.	Modified.	Entire Re-Trial Ordered.	Partial Re-Trial Ordered.	Motions.	Appeals to Supreme Judicial Court.	Appeals to Supreme Judicial Court—Perfected.	Appeals to Supreme Judicial Court—Affirmed.	Appeals to Supreme Judicial Court—Reversed.	Appeals to Superior Civil Court.	Entered by Non-Suit.	Entered by Trial—Open Court.	Entered by Trial—After Reservation.	Entered by Agreement.	Total Defendants' Judgments.	Entered by Default.	Entered by Trial—Open Court.	Entered by Trial—After Reservation.	Entered by Agreement.	Total Plaintiffs' Judgments.	Amount of Plaintiffs' Judgments	Average Amount of Plaintiffs' Judgments.	Original Executions Issued.	Executions Renewed.
Contract	68	8	1	7	1	8	32	8	11	2	–	257	308	205	–	770	16,646	1,136	383	2,710	20,875	$4,492,136 65	$210 40	19,422	22
Tort	22	1	–	3	–	2	16	3	4	–	–	463	579	312	–	1,354	–	728	358	3,517	4,603	649,241 20	141 04	1,243	2
Contract or Tort	12	–	–	–	–	1	4	2	–	–	–	27	36	33	–	96	–	–	–	–	–	–	–	–	–
All others	1	–	–	–	–	–	2	1	–	–	5	3	16	4	–	23	381	129	14	19	543	12 00	–	429	–
Totals	103	9	1	10	1	11	54	14	15	2	5	750	939	554	–	2,243	17,027	1,993	755	6,246	26,021	$5,141,389 85	197 54	21,094	24

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

Summary, January to October, A.D. 1932

	Actions Entered—Total.	Actions Entered—Over $1000 Ad Damnum.	Actions Removed to Superior Civil Court—Total.	Actions Removed to Superior Civil Court over $5000 Ad Damnum.	Dept. Default Clerk.		Dept. Default Court.		Ints. Filed.		Marked for.		Trial List.				Findings.		Appellate Division.						
					Non-Appearance.	Non-Answer.	Non-Appearance.	Non-Answer.	To Plaintiff.	To Defendant.	Motion List.	Trial List.	Non-Suits.	Defaults	Tried.	Reserved.	For Plaintiff.	For Defendant.	Requests for Report.	Reports Allowed.	Reports Disallowed.	Petitions to Establish.	Reports Proved.	Cases Heard.	Cases Decided.
Contract . .	21,356	225	647	84	7,870	33	126	243	455	2,041	–	–	–	–	1,304	391	917	392	128	56	18	12	–	48	47
Tort . .	5,501	261	232	77	292	2	8	32	1,980	935	–	–	–	–	1,337	540	720	657	89	45	10	9	–	45	36
Contract or Tort	415	7	9	4	47	–	–	1	67	70	–	–	–	–	94	67	–	68	20	9	1	2	–	6	4
All others .	857	1	–	–	308	1	14	2	2	17	–	–	–	–	147	16	121	39	9	5	–	–	–	4	2
Totals . .	28,129	494	888	165	8,517	36	148	278	2,504	3,063	13,014	17,052	372	3,069	2,882	1,014	1,758	1,156	246	115	29	23	–	103	89

Supplementary Process Entries, January to October, 1932—1552.

STUDY OF 6,400 CASES ENTERED IN THE MUNICIPAL COURT OF THE CITY OF BOSTON I

LOCAL ACTIONS.			TRANSITORY ACTIONS BY COMMON WRIT.																								
			PETITIONS.					"CONTRACT." OR "CONTRACT OR TORT."																			
								JURISDICTION BY (a) RESIDENCE.				OR, EXCLUDING (a) (b) PLACE OF BUSINESS															
Ejectment.	Replevin.	Scire Facias.	To vacate Judgment.	Review.	To enforce Lien.	To reduce Attachment.	Other Petitions.	All of Suffolk.	A deft. of Suffolk.	Neither of Suffolk.	Neither of Mass.	All of Suffolk.	A deft. of Suffolk.	Neither of Suffolk.	Neither of Mass.	Action abated—Wrong venue.	Wrong venue—No plea.	Total in "Contract" or "Contact or Tort."	Total in "Tort."	All of Suffolk.	A deft. of Suffolk.	Neither of Suffolk.	or Neither of Mass.	All of Suffolk.	A deft. of Suffolk.	OR, EXCLU (b) PLACE OF
62	20	9	30	3	5	2	1	2,230	31	7	5	460				2	8	2,733	1,319	715		10	18	564	2	

TRANSITORY ACTIONS BY TRUSTEE WRIT.

"CONTRACT" OR "CONTRACT OR TORT."															T
JURISDICTION DEPENDENT ON A TRUSTEE.								JURISDICTION NOT DEPENDENT ON TRUSTEE.							JURISDICTION DEPEND- ENT ON TRUSTEE.	J
Trustee giving jurisdiction answers "Funds."	Trustee giving jurisdiction answers "No Funds."	Trustee discharged before answer.	Trustee discharged after answer.	Trustee defaulted, discharged.	Trustee not served or insufficiently served and discharged.	Trustee answering "Funds" charged.	Trustee giving jurisdiction defaulted.	Trustee answers "Funds."	Trustee answers "No Funds."	No answer of Trustee and discharged.	Trustee discharged.	Trustee charged.	Trustee defaulted.	Total trustee in "Contract" or "Contract or Tort."	Trustee giving jurisdiction "Funds."	
97	195	27	160	1	4	27	112	230	536	47	417	55	285	1,534		6	2	3	

BOSTON IN JANUARY AND FEBRUARY, 1930

N WRIT.

TORT.

OR, EXCLUDING (a) (b) PLACE OF BUSINESS.						ACCIDENT CASES.										
All of Suffolk.	A deft. of Suffolk.	Neither of Suffolk.	Neither of Mass.	Action abated—Wrong venue	Wrong venue—No plea.	vs. City.	Property defect.	vs. Carrier Place of Accident.			Auto Cases Place of Accident.			Total Auto Cases.	All other "Torts."
								In Suffolk.	Not Suffolk.	Not shown.	In Suffolk.	Not Suffolk.	Not shown.		
564	2	8	2	1	19	187	67	59	21	11	716	181	23	920	93

TORT.

ON DEPENDENT ON TRUSTEE.		JURISDICTION NOT DEPENDENT ON TRUSTEE.				
Trustee discharged before answer.	Trustee discharged after answer.	Trustee answers "Funds."	Trustee answers "No Funds."	Trustee discharged by plff.	Trustee defaulted.	Total trustee in "Tort."
2	3	1	7	2		16

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

Summary, January to October, A.D. 1932

	Appellate Division—*Concluded.*											Defendants' Judgments.					Plaintiffs' Judgments.								
	Affirmed.	Reversed.	Modified.	Entire Re-Trial Ordered.	Partial Re-Trial Ordered.	Motions.	Appeals to Supreme Judicial Court.	Appeals to Supreme Judicial Court—Perfected.	Appeals to Supreme Judicial Court—Affirmed.	Appeals to Supreme Judicial Court—Reversed.	Appeals to Superior Civil Court.	Entered by Non-Suit.	Entered by Trial—Open Court.	Entered by Trial—After Reservation.	Entered by Agreement.	Total Defendants' Judgments.	Entered by Default.	Entered by Trial—Open Court.	Entered by Trial—After Reservation.	Entered by Agreement.	Total Plaintiffs' Judgments.	Amount of Plaintiffs' Judgments	Average Amount of Plaintiffs' Judgments.	Original Executions Issued.	Executions Renewed.
Contract	37	7	1	1	1	14	17	4	2	–	–	187	239	153	–	549	11,543	674	243	1,625	14,085	$3,011,670 00	$213 81	13,753	15
Tort	32	3	–	1	–	5	13	5	4	–	–	312	343	314	–	969	–	454	266	2,121	2,841	436,674 80	153 70	973	–
Contract or Tort	4	–	–	–	–	–	–	3	2	–	–	19	27	41	–	87	–	–	–	–	–	–	–	–	–
All others	–	2	–	–	–	–	1	–	1	1	6	7	20	19	–	46	350	111	10	17	488	127 00	–	406	–
Totals	73	12	1	2	1	19	31	12	9	1	6	495	629	527	–	1,651	11,893	1,239	519	3,763	17,414	$3,448,471 80	$198 02	15,130	15

MUNICIPAL COURT OF THE CITY OF BOSTON

SMALL CLAIMS

Summary, A.D. 1931

	Actions Entered.	Reported as Settled out of Court.	Amount of Plffs.' Claims.	Notice Mailed to Defts.	Notices Returned. Acceptance Refused.	Notices Returned. Unable to Locate.	Notice to Plffs.	Counter-Claims or Set-offs.	Amount of Counter-Claims or Set-offs.	Answers. Defendants.	Answers. Plaintiffs.	Settled in Court before Hearing.	Hearings.	Settled in Court after Hearing.	Reserved.	Dismissals.	Transferred for Trial.	Removed to Superior Court.	Referred to Appellate Division.
Contract	1,241	111	$28,408 70	1,241	3	72	13	13	$383 46	379	13	29	379	6	–	2	4	1	–
Tort	180	–	4,234 71	180	–	–	1	1	25 50	101	1	–	104	–	–	–	1	1	–
Totals	1,421	111	$32,643 41	1,421	3	72	14	14	$408 96	483	14	29	483	6	–	2	5	2	–

	Judgments. Entered on Defaults.	Entered on Non-Suits.	Entered on Hearings.	Total Plffs.' Judgments.	Amount Plffs.' Judgments.	Total Defts.' Judgments.	Amount Defts.' Judgments.	Judgments Vacated.	Neither Party.	Counter-Claims Dismissed.	Counter-Claims Disallowed.	Plffs.' Exons.—Original.	Defts.' Exons.—Original.
Contract	469	26	379	750	$17,811 19	124	–	4	22	1	9	432	–
Tort	–	3	104	67	1,394 02	40	–	–	2	–	1	–	–
Totals	469	29	483	817	$19,205 21	164	–	4	24	1	10	432	–

MUNICIPAL COURT OF THE CITY OF BOSTON

SMALL CLAIMS

Summary, January to October, A.D. 1932

	Actions Entered.	Reported as Settled out of Court.	Amount of Plffs.' Claims.	Notice Mailed to Defts.	Notices Returned. Acceptance Refused.	Notices Returned. Unable to Locate.	Notice to Plffs.	Counter-Claims or Set-offs.	Amount of Counter-Claims or Set-offs.	Answers.		Settled in Court before Hearing.	Hearings.	Settled in Court after Hearing.	Reserved.	Dismissals.	Transferred for Trial.	Removed to Superior Court.	Referred to Appellate Division.
										Defendants.	Plaintiffs.								
Contract . .	831	73	$14,667 93	831	1	66	4	4	$149 00	276	6	24	276	7	–	–	3	3	–
Tort . . .	100	–	1,264 55	100	–	–	1	1	–	60	1	–	60	–	–	1	2	–	–
Totals .	931	73	$15,932 48	931	1	66	5	5	$149 00	336	7	24	336	7	–	1	5	3	–

	Judgments.								Neither Party.	Counter-Claims Dismissed.	Counter-Claims Disallowed.	Plff.s.' Exons.—Original.	Defts.' Exons.—Original.
	Entered on Defaults.	Entered on Non-Suits.	Entered on Hearings.	Total Plffs.' Judgments.	Amount Plffs.' Judgments.	Total Defts.' Judgments.	Amount Defts.' Judgments.	Judgments Vacated.					
Contract	361	12	276	572	$12,935 30	77	–	3	2	–	–	383	–
Tort	–	1	60	43	774 55	18	–	–	1	–	1	–	–
Totals	361	13	336	615	$13,709 85	95	–	3	3	–	1	383	–

APPENDIX B

REPORT

OF

COMMITTEE ON ACCIDENT LITIGATION OF THE CONFERENCE OF BAR ASSOCIATION DELEGATES.*

(Presented at the meeting of the Conference at Washington, October 10, 1932, and set over for discussion at the meeting next year; new members representing the opposition to the plan are to be added to the committee.)

To the Conference of Bar Association Delegates:

In February of this year the Committee to Study Compensation for Automobile Accidents (hereafter called the "New York Committee"), of which your Chairman and Mr. Dodd were members, made to the Council for Research in the Social Sciences of Columbia University an elaborate report, comprising 300 pages, and including the facts and findings, the result of the two years' investigation by expert investigators employed by the committee under an ample appropriation. Your present committee fully concurs in the findings of the report, a copy of which is annexed hereto.

The views of your committee, as contained in the above report, supplemented by your committee's own experience and investigation, are as follows:

The proper compensation for motor vehicle accidents is one of the most serious problems presented to the bar today. Every year in the United States motor vehicles kill more than 30,000 persons and injure more than a million. The question involved is not merely that of justice to the injured persons, but the broad question as to who should properly bear the loss to the community from the disablement of all these people, a very large proportion of whom are injured by irresponsible persons or under circumstances in which no recovery is possible. The burden of this loss falls on their doctors, hospitals, landlords, tradesmen, neighbors and friends, whereas it should properly fall on motorists as a class. Were it not for the use of motor vehicles these injuries and losses would not occur, and when they do occur, their compensation should be part of the ordinary cost of operating motor vehicles. The activity of operating motor vehicles, which by such operation secure the economic advantages incident to such operation, should provide adequate compensation for the economic losses also incident thereto.

Liability Under Existing Law

Under existing law, liability for loss caused by motor vehicle accidents depends on the fault of the defendants, and on the absence of negligence on the part of the injured person, who must satisfy the jury of the fault of the defendant, of his own freedom from fault, and also as to the amount of damages suffered by him.

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* This report is reprinted to show the substance of the report of the Columbia Research Committee on compensation without fault.

For discussion of this report, see "Compulsory Compensation Insurance for Automobiles," by Crandall Melvin, of Syracuse, N. Y., before the Federation of Bar Associations of the Fifth Judicial District in New York, June 25, 1932, and articles in the *Columbia Law Review* for May, 1932, by Young B. Smith, Austin J. Lilly and Noel T. Dowling (reprinted in pamphlet form). See also a review of the Columbia Report by Prof. Landis, *Harvard Law Review*, for June, 1932, p. 1428.

This system of litigation has certain marked defects: (1) the imposition on the plaintiff and on the defendant of the burden of producing evidence as to fault, although the accident itself has often hindered or prevented them from obtaining witnesses; (2) the difficulty of ascertaining the facts sought, even where the best evidence is obtainable, because witnesses who are neither trained nor prepared to observe cannot, after the lapse of months or even years, enable a jury, which has no training in fact finding, to fix the blame for an accident caused by events which succeeded each other in the space of a few seconds; (3) the impossibility of fixing the damages accurately, since there are no recognized criteria of the value of pain or of life or of disability; (4) the delay, especially in the large cities, caused by waiting for trial, and aggravated in some cases by appeal; (5) the heavy cost of attorneys' fees which generally range from 25% to 50% of the amount recovered; (6) the financial irresponsibility of many motorists who cause accidents; (7) the burden cast upon the courts and the consequent congestion of all judicial business in large cities, due to the volume of motor vehicle accident litigation.

The investigations of the committee during the past two years have been directed primarily at determining the actual facts with regard to the last four of these matters.

Liability Insurance

Public liability insurance is designed to protect the financially responsible motorist from loss of time and money in case of an accident. Indirectly, it has also proved of great benefit to injured persons by assuring to them a fund from which they may recover, especially where there is a clause making the insurer directly liable to the injured person in case of the insolvency of the insured.

Less than one-third of the motor vehicles operating in the United States are insured.

Measured by annual premiums, automobile public liability insurance and workmen's compensation insurance are of about equal importance, and each is larger in volume (about $250,000,000 in 1929) than any other line of casualty insurance. The stock insurance companies have in general lost money on this business during the past few years, while (even in Massachusetts) well-managed mutual companies have been able to pay dividends to their policy holders.

When an insured motorist is involved in an accident his insurance company will try to settle with the injured person if there is any chance that damages can be recovered by litigation. In the great preponderance of cases in which any payments are made, they are by way of voluntary settlement and are not compelled by litigation.

From a study of some 8,800 actual cases by the investigators employed by the New York Committee, covering typical localities throughout the country, it clearly appears that in cases not covered by insurance, only a very small proportion (perhaps 10 per cent) of the injured persons received compensation sufficient to cover the medical, funeral, wage and property losses to the time of the investigation. Indeed, in more than two-thirds of such cases no compensation whatever was received, and in fatal and serious injury cases, this proportion was even higher. Although in most of the insured cases enough was recovered to cover such losses, the amounts received in case of death or serious injury cases did not average as high as under workmen's compensation.

Even where payments are made they are subject to great delay, par-

ticularly in the serious cases, where need of immediate relief is the most urgent.

Financial Responsibility Laws

The purpose of financial responsibility laws, as their name implies, is to procure the financial responsibility of certain persons involved in motor vehicle accidents. Since the first financial responsibility law became effective in Connecticut in 1926, these laws have been adopted in 17 other states and in four provinces of Canada. A complete financial responsibility law has two kinds of provisions; one aims to require motorists who have shown themselves to be careless to carry liability insurance in the future; the other aims to require the payment of judgments arising out of motor vehicle accidents. Both are enforced by denying the motorist the privileges of the road until he complies with the order to insure or to pay.

While such a law, if strictly enforced, should tend to increase to some extent the number of insured owners and to keep some negligent operators off the road, the facts do not show any great effect in the states where such laws are actually in force. The number of persons who invoke the law to procure the pursuit of judgments is negligible, though the existence of the law doubtless has some effect in forcing uninsured defendants to make voluntary settlement.

The insurance companies contend that such laws tend to reduce accidents. The investigations of the committee do not indicate, however, that such laws have had or will have any appreciable effect in reducing accidents.

Compulsory Liability Insurance

In Great Britain and in certain other European countries every motorist is obliged to carry liability insurance. Massachusetts is the only state in this country which makes such a requirement. The Massachusetts law, which has been in effect since January 1, 1927, requires each owner, before registering his car, to give proof of financial responsibility with respect to liability for personal injuries. This proof almost always takes the form of liability insurance. Since the Commonwealth does not conduct a competitive insurance business, the law provides that premium rates shall be fixed by the Commissioner of Insurance. Many insurance men strongly oppose the law because of the rate regulation feature, which has resulted in underwriting losses, and because they fear that any form of compulsory insurance will lead to an exclusive state insurance service.

While a law of this kind results in bringing practically all motor vehicles within the insured group, it may in the long run tend to increase the rate of premium, since the motorists who will not insure in the absence of such a law are the less preferable risks. The Massachusetts law has also substantially increased accident litigation and court congestion, this being the natural result of assuring a financially responsible defendant to almost every one injured in a motor vehicle accident, without at the same time eliminating the necessity for proving negligence and precise damages.

The Massachusetts law has also been criticized as tending to increase accidents. This argument strikes at all liability insurance by urging that any insurance which gives the needed protection will tend to make the insured less careful. It is not supported by any reliable data. It is believed that a motorist who is not deterred from careless driving by consideration for his fellow men and by fear of the criminal consequences

will not be made careful by the contemplation of the possible payment of damages.

The Compensation Plan

In the opinion of your committee, it is essential both that the law require insurance for persons killed or injured by the 70 per cent of motorists at present uninsured, and also that the present inadequate and obsolete system of compensation based on fault, be superseded by a new system of compensation without fault. Such a system would, in the opinion of your committee, tend to eliminate or greatly to mitigate a large part of the defects in the present system. By providing prompt settlements based on the easily provable fact of injury by a motor car, it would tend to eliminate the hardships incident to delay, and also those incident to the difficulty on the part of the injured person in securing witnesses, and to the uncertainty of their memory and of the amount of damages obtainable.

By rendering immaterial the question of negligence and contributory negligence, and making the amount of damages depend on a statutory scale of benefits, it would do away, to a great extent, with the legal problems at present involved and hence both relieve the claimants of the expense of attorneys' services and the courts from the present congestion.

While such a system would certainly require many persons to pay for insurance who now do not, and, if a scale of compensation as high as that under the New York Workmen's Compensation law be used, would probably result in an increase of the rate of premium paid by those now carrying insurance, nevertheless such increased cost would be very well worth the benefit obtained. The additional expense would be much less than the annual expenditure by the average motorist for unnecessary automobile accessories for his own benefit or convenience and would be offset by the security obtained by having the responsibility of other motorists insured.

While no compulsory compensation law has yet been adopted in any state in the United States, such laws have been proposed in several states and are already in effect, as applied to motor vehicles, in Denmark, Sweden, Finland, and in France, at least in pedestrian accident cases.

Annexed to this report is the outline of a plan from the Report of the New York Committee for a compulsory compensation law modeled after the New York Workmen's Compensation law. The exact benefit of a workmen's compensation law can, of course, be applied to all persons engaged in lucrative occupations, but not to housewives, children and permanently unemployed persons. For injuries to a housewife, the assumed plan provides benefits based on the wages generally paid for housework, while for death the plan assumes an amount not exceeding $1,500. For injuries to children and to permanently unemployed persons, the plan assumes compensation at $8.00 a week, and for the death of a child, a minimum of $500, and a maximum of $2,500. In cases of permanent disability of children, provision is made for increases of the weekly rate from time to time. In all cases, medical and funeral expenses are to be paid.

No special provision is made for hit and run and stolen car cases. It would be possible to provide for compensation in such cases from a special fund raised by payments of arbitrary amounts for the death of persons without dependents. Nor is any special provision made for the insurance of non-resident cars, though their owners are made liable to pay compensation.

The assumed plan would be administered by a special board after the manner of workmen's compensation.

A feature requiring special consideration would be the choice of physicians. Under most workmen's compensation laws an injured employee is bound to accept the services of the physician provided for him by his employer or by his employer's insurer. Under a compensation plan for motor vehicle cases it would of course be necessary to allow injured persons to choose their own physicians. This would require a careful system of checking by the insurance company physicians and by the compensation board physicians, to prevent malingering and fraud.

The committee can find no satisfactory evidence that compulsory liability insurance has increased accidents, and sees no reason to suppose that a compensation plan in itself would do so.

Nor, in the opinion of the committee, would such a system tend to increase fraud. If anything, it would remove a great part of the temptation to fraud incident to the present system and would practically eliminate the practice of ambulance chasing.

The committee believes that a compensation plan analogous to workmen's compensation would not offend the due process clause of the federal constitution. In certain states such a law would offend provisions of the state constitutions forbidding limitations upon the amounts recoverable for personal injuries or death. In these states constitutional amendments would, of course, be required to make a compensation law possible.

The committee does not believe it advisable to apply the principle of compulsory compensation to accidents resulting from causes other than motor vehicles, as such cases involve more serious constitutional and practical problems.

Conclusions of the Committee

As applied to motor vehicle accidents, the system of compensation based on fault is inadequate to meet present conditions, being costly, slow, not calculated to do justice in the average case, and making no provision to ensure the financial responsibility of those whose motor vehicles cause injuries to others.

Financial responsibility laws like those in force in Connecticut are ineffective to correct this injustice. They constitute little more than a futile legislative gesture.

Although a compulsory liability insurance law like that in effect in Massachusetts is preferable to the present system, it tends to correct but one of the defects of the present system.

While the committee fully approves of requiring every owner of a motor vehicle to insure against whatever legal liability may be imposed upon him for personal injuries or death caused by its operation, it believes that the remedy must go farther than the compulsory liability insurance law, and that no system based on liability for fault is adequate to meet existing conditions. The committee favors the plan of compensation with limited liability and without regard to fault, analogous to that of the workmen's compensation laws. Such a plan would eliminate the use of the principle of negligence, would place the burden of economic loss on the owner or operator to whose activity the loss is chiefly due, would provide for an equitable distribution of the insurance fund according to the extent of the economic loss, and would provide a prompt remedy at small cost to the injured person or his family. The operation

of such a plan would be of special benefit in the majority of cases of serious injury or of death. The committee believes that such a compensation plan would be workable, that its cost to motor vehicle owners need not be unreasonable and that it would not violate the due process clause of the federal constitution.

The opposition on the part of the insurance companies to the plan for compulsory compensation is believed to be based primarily on their reluctance to accommodate themselves to a new system necessitating accumulation of wholly new data before being able to fix premiums with any degree of accuracy, and on their fear that any form of compulsory compensation insurance will lead to an exclusive state insurance service.

Your committee respectfully submits to the Association for its earnest consideration, criticism and suggestion, the plan for the Compensation Act annexed hereto.

Respectfully submitted,

HENRY S. DRINKER, JR., *Chairman*,
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July 1, 1932.

PLAN

a. Liability to Pay Compensation.—The general purpose of the compensation plan is to impose on the owners of motor vehicles a limited liability, without regard to fault, for personal injury or death caused by the operation of their motor vehicles. The liability to pay rests primarily on the owner of the motor vehicle and the plan provides security for this liability by requiring every registered motor vehicle to be covered by compensation insurance.

The owner of any motor vehicle which causes injury or death must pay compensation if the motor vehicle at the time of the accident was driven by him or by another with his consent. This gives a remedy in every case except those in which the motor vehicle has been operated without the owner's consent or cannot be identified. If the motor vehicle is registered in another state, the owner's liability is the same, although there is no practical way of enforcing the insurance requirement. Hence, if the owner of an out-of-state car carries insurance against compensation liability, the injured person will be protected, while if he carries no such insurance, the injured person will stand exactly as he stands now with an uninsured defendant, except that he will have the right to defined benefits and will not have to prove negligence.

b. Cause the Basis of Liability.—When can a motor vehicle be said to cause injury or death? This question is also presented in applying the law of negligence. The committee suggests that a compensation law should use the word "cause" allowing the administrative board and the courts to apply accepted legal principles in the process of interpretation. It would of course be possible to limit the liability of an owner to cases in which his motor vehicle caused the injury by collision, thus omitting such cases as those in which a motorist causes an accident by his glaring headlights or by forcing another off the highway.

c. Incidence of Liability.—In cases involving simply a pedestrian struck by a motor vehicle the owner of the motor vehicle must of course pay compensation. But where two motor vehicles collide, the problem is more complex. Here the committee believes that it will be best to require each owner to compensate the occupants of his own motor vehicle, except the owner himself, who will look to the owner of the other motor vehicle for compensation. Such a plan avoids the objection, which may have some constitutional force, that a man should not be required to insure against loss caused by injuries to himself.

In the occasional case where more than two motor vehicles cause the accident, any owner injured will be entitled to claim against the other owners jointly; otherwise the situation will be the same as where only two motor vehicles cause the accident.

A pedestrian or other person outside of a motor vehicle whose injury is caused by more than one motor vehicle will be entitled to recover compensation from all the motor vehicle owners jointly.

d. Subrogation.—If the accident has been caused by the negligence of someone not concerned in it as the occupant or owner of a motor vehicle or as a person injured, the owner or insurance carrier who has been obliged to pay compensation will be entitled to recoup by an action of damages against the negligent person. A common example of this would be the right to recover from the municipality any amount which the owner or insurance carrier had been required to pay by way of compensation to persons riding in the owner's car and injured because of a hole in the street.

e. Who Receives Compensation.—Compensation is to be paid in respect of any injury or death caused by the operation of a motor vehicle, unless the person injured or killed wilfully intended to cause injury to himself or to another. The committee believes also that injuries to owners and operators of motor vehicles should be excluded, unless they are caused by another motor vehicle. An operator, for example, who is injured by driving his car into a tree will not receive compensation, because to allow him to do so would open a wide door to fraud. In the case of an owner, there would be the additional objection that to allow him compensation would be in effect to require him to insure against his own injuries.

f. Scale of Benefits.—The committee has drafted the following schedule of benefits based on the workmen's compensation laws of New York and of Massachusetts.

(1) *Medical Benefits.*—The cost of medical care is paid in all cases regardless of the duration of disability (this follows the New York law, in Massachusetts such cost is paid only during the first two weeks of disability and in unusual cases).

(2) *Waiting Period.*—No compensation is paid for the first week of disability.

(3) *Weekly Wages.*—Compensation is based on weekly wages. For employed persons these are calculated as under the workmen's compensation law. For business and professional men, profits take the place of wages in the calculation. For persons temporarily unemployed, wages are calculated by reference to the last period of steady employment. For housewives, wages are assumed to be those paid for similar work at the time and place of their occupation. For permanently unemployed persons, for unemployed minors of nineteen and under, and for students of over nineteen, the minimum wage of $8.00 is assumed. (New York $8.00; Massachusetts $9.00.)

(4) *Permanent Total Disability.*—The injured person receives two-thirds of his weekly wages during the continuance of his disability.

(5) *Temporary Total Disability.*—The injured person receives two-thirds of his weekly wages during the continuance of his disability.

(6) *Permanent Partial Disability.*—As in workmen's compensation, the plan includes a schedule listing various types of dismemberments or loss of use of members. In respect of each an injured person is entitled to receive two-thirds of his average weekly wages for a specified number of weeks, adjusted roughly to the seriousness of the case; if the injury is not covered by the schedule he receives two-thirds of the difference between his wages before and after the accident. In cases of unemployed minors and in other cases where it shall be equitable, the compensation board may estimate the wages which the injured person would have received from time to time.

(7) *Temporary Partial Disability.*—During the continuance of temporary partial disability the injured person receives two-thirds of the difference between his wages before and after the accident.

(8) *Disfigurement.*—For serious facial or head disfigurement or other disfigurement impairing the earning power of the injured person, he receives a proper and equitable amount, not to exceed $3,500. (New York only.)

(9) *Death.*—Compensation in death cases is as follows:

(a) *Funeral Expenses.*—Funeral expenses are paid in all cases; not exceeding $200 (New York $200; Massachusetts $150).

(b) *Earners with dependents.*—The dependents receive compensation as provided by the workmen's compensation law of the state. This includes earners temporarily unemployed.

(c) *Housewives.*—Members of the family of the deceased living in her household receive a minimum of $500 and a maximum of $1,500.

(d) *Children.*—For unemployed children of nineteen and under, the parents or the surviving parent receive a minimum of $500 and a maximum of $2,500.

(e) *Students.*—For unemployed students over nineteen, compensation is paid to the wife and children or to supporting parents, as in the case of employed persons, but with an assumed wage of $10 a week.

(f) *Earners without dependents.*—No compensation is paid with respect to earners without dependents, except the amount provided for the funeral.

(g) *Unemployed persons.*—No compensation is paid with respect to permanently unemployed persons, except the amount provided for the funeral.

(10) *Maximum and Minimum.*—The maximum and the minimum compensations payable for different kinds of disability are in addition to those already stated as follows:

Nature of disability	Maximum per week		Minimum per week		Total Maximum	
	N. Y.	Mass.	N. Y.	Mass.	Weeks	Amount
Permanent total....	$25	$18	$8	$9	500 (Mass.)	$4,500 (Mass.)
Temporary total....	25	18	8	9	500 (Mass.)	5,000 (N. Y.) 4,500 (Mass.)
Permanent partial...	20	18	8	..	... .	4,500 (Mass.)
Temporary partial..	20	18	8	..	... .	4,000 (N. Y.)
Deaths (a month)...	100	..	..	..	400 (Mass.)	6,400 (Mass.)

g. Insurance.—No motor vehicle can be registered unless the owner presents a certificate showing that he has procured insurance against liability to pay compensation. As to whether insurance should be carried with private companies, with an exclusive state fund, or with private companies or a competitive state fund, each state would presumably follow its practice with respect to workmen's compensation.

h. Exclusiveness of Remedy.—The compensation provided by the plan is in lieu of all other compensation or damages for personal injury or death caused by the operation of a motor vehicle, except as to cases expressly excluded from the operation of the act. An example of a case so excluded is that of an operator who strikes a train; he would still have his action against the railroad company based on the law of negligence.

The committee has decided against the feasibility of an optional plan. If the injured person has his option to claim compensation benefits or to bring an action at law, the motorist must carry two kinds of insurance for full protection; while if the motorist has the option, the injured person will generally be relegated to the least profitable remedy.

i. Administration.—The compensation plan is to be administered by a special board created for that purpose, with the assistance of such referees and clerks as may be required. Procedure will follow that now in effect under workmen's compensation.

j. Reports.—Owners and operators involved in accidents will be required to report within a prescribed time to the commissioner of motor vehicles, and persons injured will be required within a prescribed time to give notice to the compensation board and to the insured motorist, stating the extent of injury and the name and address of the attending physician.

THE PROBLEM OF COMPENSATION INSURANCE SUMMARIZED

(Extract from an address on "Ominous Abuses Threatening the Insurability of Workmen's Compensation," by F. Robertson Jones, General Manager, Association of Casualty and Surety Executives, at the annual convention of the International Association of Insurance Counsel, September 8, 1932.)

This extract is referred to by the Judicial Counsel in connection with the discussion of proposals for extending compulsory motor vehicle insurance to cover liability without fault, see page 27 of this report.

To sum up what has preceded: The problem of compensation insurance—and it is a difficult problem even under favorable conditions—is, by means of advance premiums at fairly level rates, to accumulate and maintain the funds necessary to furnish the "medical benefits" needed for industrial injuries and to "compensate" for the wage losses caused by such injuries. But, in the ways I have indicated, such insurance is being progressively enlarged to include more and more ordinary "health insurance," that is insurance against loss due to ill health, however originating, merely aggravated or accelerated by going to work instead of going to the hospital; to include much "old-age insurance," that is to

insure high percentages of full wages throughout disabilities originating from industrial accidents but prolonged immensely by superannuation; to include much "life insurance," that is to insure gratuities to dependents of deceased employees far in excess of the losses caused to them by the injuries to the deceased; to include much straight personal accident insurance, that is to insure against injuries not caused by a risk of the employment and to insure in arbitrary amounts in excess of the resulting wage loss; to include much insurance against the consequences of neglect or mistreatment of industrial injuries by the injured; and finally —and just now most extensively—to operate as "unemployment insurance," that is to insure against inability to obtain re-employment after recovery from an industrial injury; besides which, through maladministration and faults in the laws, the insurance funds are being drained by fraudulent and exaggerated claims, levied upon illimitably by hospitals and shyster doctors,* and more or less lawlessly plundered for lavish distribution of political largesses by some of the administrative authorities. Clearly the business of compensation insurance cannot continue to be carried on under such conditions. Compensation insurance funds must be protected from the powers that prey; compensation insurance must be restricted to its own proper functions; the process of perpetually extending it to provide relief, more and more, for misfortunes other than the consequences of injuries for which industry is truly responsible must be halted, indeed reversed; and relief for such other misfortunes must be provided in other ways—where appropriate, by other insurances.

Here I should emphasize that the purpose of all this is merely to point out the factors that are resulting in an inordinate extension of workmen's compensation insurance beyond its proper limits and a crushing increase in its costs. I have not attempted to apportion the blame. Consequently, this is not to be construed as an attack on any of the courts or on the Compensation Commissions in general. Indeed I think that we have all been at fault, that we all started off to treat the workmen's compensation law as too much of a general panacea, to be applied "generously" and its bounties distributed readily, without regard to any legal technicalities. Experience now demonstrates that we have run wild and that for the future we must "get down to brass tacks" and subject even workmen's compensation to the rules of common sense.

SUGGESTIONS AS TO THE REMEDY

Here my subject theoretically ends. But having described certain things that are wrong in connection with workmen's compensation, it will be appropriate to add suggestions as to the remedy.

In my opinion, the remedy is to revert, generally, to the principles of the earlier compensation laws.

1. Compensation should be restricted to cover only injuries *caused by* accident, plus "occupational diseases," defined and subject to special conditions as explained later.

2. "Accident" should be defined to include only a sudden occurrence. It need not be a single event, but, if a series of events, it should be limited to happenings during not more than a single spell or shift of work. Bodily ills of gradual contraction should be compensable only as and if "occupational diseases."

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* For the history of this New York experience, see address by William P. Cavanaugh, in "The Industrial Doctor" (N. Y.), July, 1932.

3. "Injury by accident" should be defined to exclude mental or nervous injuries due to fright or excitement only.

4. Where an accident aggravates or accelerates a pre-existing disease, only the aggravation or acceleration of disability or death due to the accident should be compensated.

5. Waivers of compensation for the consequences of pre-existing physical defects or infirmities should be permitted, as under the Connecticut law.

6. The doctrine of "added peril" — the doctrine that an accident caused by a risk incurred through bravado, or by doing something dangerous or going somewhere not contemplated by the employment— should be written into our laws.

7. Compensation for deaths should be limited to cases where death results from the accident within one year or follows continuous disability and results from the accident within five years.*

8. Compensation should be based upon the probable loss of earnings from the injury and limited to only a portion of such loss—subject to reasonable maxima and minima. Arbitrary formulas for computing "average earnings" which result in any considerable number of substantial departures from this rule should be amended.

9. Compensation for *permanent* disability, total or partial, should run for life only, and should terminate on the death of the beneficiary from a cause unconnected with his injury instead of being converted into gratuitous life insurance benefits for his dependents.

10. In fatal cases, the right to compensation should depend upon the status of the persons claiming dependency as of the date of the *accident;* and the compensation should be less for *partial* dependency than for *total* dependency, and less for a condition of *temporary* dependency than for a condition of *permanent* dependency. Moreover (if compensation is, according to its principles, to be based strictly upon loss, without life insurance addenda), compensation to a widow should be be limited to continue for not longer than the life expectancy of her deceased husband.

11. Though inferences from surrounding facts and circumstances, in lieu of positive evidence, should be permitted under reasonable conditions, the many false presumptions in favor of claimants, established by statute or practice under some of our compensation laws, should be abrogated, and, in the absence of equitable estoppel, the burden of proving the facts necessary to establish a case for compensation should rest primarily upon the claimant.

12. All findings of fact by Compensation Commissions, in controverted cases, should be subject to review by the courts, and to reversal if contrary to the manifest weight of evidence.

13. Notice of the *accident* as soon as practicable should be strictly required—unless the employer or his insurer has prompt knowledge of it. Delay should be excusable under all circumstances where justice so requires; but the presumption should be against excuse; the consequences of delay—in the way of infections, aggravation of injury, etc. —should not be compensable; and, where notice of accident is long delayed, every presumption should be against the validity of the claim.

14. Compromises of really doubtful claims, and *final* settlements in neurasthenic cases, should be permitted, subject to the approval of the administrative authorities.

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* Cf. California compensation law, §11b.

15. The power of Compensation Commissions to reopen closed cases should be limited very briefly as to time and made subject to strict conditions.

16. How to deal with the deadly abuse of the medical benefits is a problem of which I am unable to offer any solution. It is an unsolved problem everywhere that compensation insurance covers unlimited medical benefits. And it is just about as far from a satisfactory solution under the principal European state systems of health insurance. It is to be hoped that the better elements in the medical profession, which profession is profiting tremendously from workmen's compensation, can be persuaded to co-operate in measures designed to bring it about that the goose which lays the golden egg shall not be killed. But that is only a hope. Being unable myself to point out a cure for this evil, I can only submit it as a problem to the solution of which we should all most earnestly devote our thoughts and efforts.

17. Now as to occupational diseases. . . . . .

[This part is omitted as it has no bearing on the problem of extending compulsory automobile insurance to cover compensation without fault, for such compensation would not involve the problem of "occupational diseases" of gradual contraction, but only accidental aggravation of diseases generally.]

If our compensation laws were amended, where necessary, to conform to the preceding suggestions, it would, I believe, go far toward putting the insurance of compensation on a safe and sane basis—except for the peril of the illimitably expansible medical benefits. But in order to bring that about we must first secure general popular acceptance of the proposition that the relief of poverty among wage-workers caused by unemployment, old-age, infirmities, vices and common illnesses is a community or co-operative problem, for which the employers of the victims ought not to be held solely and entirely responsible—that "compensation" is rightly due by the employer only for the wage losses of his employees for which the risks of his employment are really and truly responsible, and that these other causes of economic distress must be dealt with in other ways.

In closing, let me say that I think the chief instrumentalities by which these reforms and renovations are to be accomplished are employers, lawyers, doctors, and even employees, through their local, state and national organizations—the last-mentioned, in the interests of justice to their associates or their dependents who are deserving of a full measure of liberal treatment under just and reasonable laws properly administered and enforced. Through these instrumentalities immediately set in operation, we may hope to save the fundamental purpose of these beneficently designed laws.

Let's get back to first principles.